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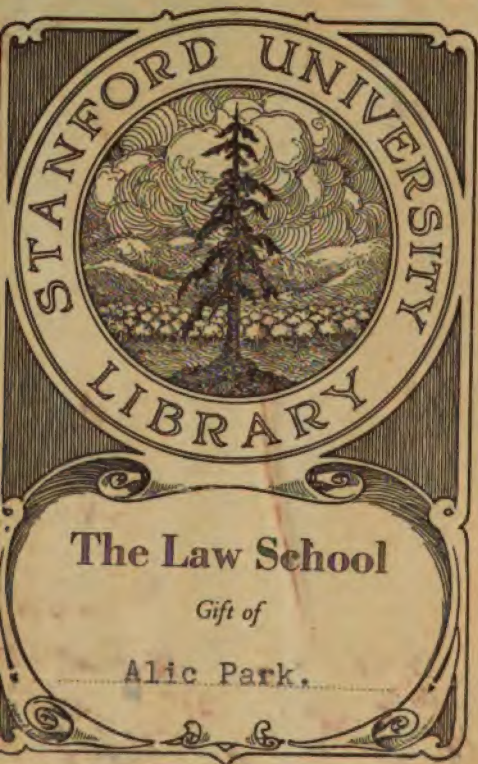
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LAW MADE EASY

A BOOK FOR THE PEOPLE.

BY

LELIA JOSEPHINE ROBINSON, LL. B.,

MEMBER OF THE

SUFFOLK (MASSACHUSETTS) BAR.

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DEDICATION.

TO MY PARENTS,

Whose
tender aid and
encouragement have supported me in my every endeavor,
this book is dedicated in
all gratitude and
affection.

INTRODUCTION.

In my first years of practice, my business was chiefly of an advisory nature. Men and women came to me with questions on business and domestic matters,—difficult or complicated questions rarely, simple questions usually, which I could answer off-hand, wondering the while how they should need to ask. Yet a second thought always reminded me that, but a few short years before, I was far more ignorant than they on those very subjects, and it was only by a long course of study that I was able to understand and explain them.

This struck me as somewhat singular. Why should it be necessary to go through a full legal course in order to gain knowledge so simple in its nature, or else, pick it up slowly and painfully, by dint of hard experience—the only other alternative, as it appeared—and by paying some lawyer five dollars per question, to say nothing of fees for conducting cases into which ignorance is sure to plunge one sooner or later? Books there were of every possible kind on every conceivable subject, and surely there must be those which would supply the public with sufficient information on such important matters as would enable them to keep clear of the legal pitfalls which yawn before unwary feet in this busy world of ours. The law itself absolutely requires every person, except very young children, to know the laws, both civil and criminal, of the land and the state in which he or she lives, and if they be broken, the unfortunate prisoner or defendant cannot plead

ignorance in defence. "*Ignorantia legis neminem excusat*" is a well-known legal maxim,—ignorance of the law excuses no one. And again, "*Ignorantia facti excusat, ignorantia juris non excusat*,"—ignorance of facts excuses, ignorance of the law does not excuse. Even foreigners just arrived from another country or state, are held fully accountable to the laws prevailing in their new abiding-place, though these be quite contrary to those of their old home on the same matters. And how could people be held thus responsible, if no means were provided by which they could acquire the necessary information?

It was not to me only that these puzzling inquiries presented themselves. Repeatedly I was asked by those to whom ignorance was not a voluntary choice,

"What can I read by which to get some rudimentary knowledge of my legal rights and my legal duties?"

And I could only reply—"You might read the statutes; every one ought to be familiar with the statute-law of his own state."

But this suggestion was seldom received with enthusiasm.

"That would be rather worse than trying to read the unabridged dictionary. No doubt there is much in the statutes that I would like to know, if I could but find it, or when found, understand. What I want is some general condensed information on these subjects, easy to read and to comprehend."

I knew of nothing better for the purpose, however, than "*Blackstone's Commentaries*," which, when written, was intended for the laity as well as the profession; and the very title of this grand work unfor-

tunately put a damper on the ambition of these seekers after knowledge.

I did not mention Blackstone, until I had searched for such a work as I knew was required, and searched in vain.

"Oh, yes!" I was laughingly told by my brothers of the profession, "there are works just such as your clients ask for, and you can't do better—if you want business—than to recommend them. They are the every-man-his-own-lawyer kind of book, and your clients will read a little, think they know quite as much as you do, go to work to draw their own papers and attend to their own legal business, and the result will be that they'll get themselves into all manner of scrapes, and have to come to you to get them out again!"

But I didn't propose to be laughed out of my idea, so I carefully examined these works for myself. I found the criticisms that were made on them to be only too well deserved. Very few books purporting to contain legal instruction for the laity had ever been published. Of these, only one or two were at all reliable in the law that they gave, and they assumed the previous possession by their readers of so much knowledge and experience as to be of practically no value to the very people who most needed such aid. Technical language was freely used, definitions were lacking and explanations brief; and worse yet, the pages were padded full of blank forms for legal documents of many kinds, accompanied by assurances, expressed or implied, that parties without legal training might safely copy and fill out the blanks for themselves. Furthermore, as they treated

of commercial matters alone, little or no information was given on other subjects, equally important to be understood.

Then it was that the idea occurred to me of supplying the demand myself—of writing the book which it so strangely happened had not been written in this book-making age. After much hesitation and many self-doubtings, I began the work, trusting that my previous experience in journalism would enable me to understand the public need, and hoping that my legal acquirements would qualify me to meet it. That was four years ago; and now, after countless revisions of my manuscript, I am about to send it forth. To prevent the volume from swelling to an undesirable size, I have condensed as much as has been possible without sacrificing clearness; while in selecting material, I have drawn the line closely at utility, seeking to give such information only as may best enable people *to keep out of legal difficulties*. At least ninety-nine cases of every hundred that are tried in the courts, are the result of ignorance on the part of one or both of the parties thereto, and might have been altogether avoided by the possession of a little knowledge in the first place. It is this knowledge that I have endeavored to supply. Little is said as to legal actions, or the process in any court, for these matters belong to the profession, and not to the laity. Keep legally well if you can, by knowing and observing the laws of legal health; but if you are unfortunate enough to get sick, send for a reputable legal physician as promptly as possible, and give up the conduct of your case into his hands, with entire confidence that

he knows his business and will do his best for your recovery.

• The blank forms which are given in the Appendix, are merely intended as illustrations of the text,—not as a hint to draw one's own contracts, mortgages or wills. Those who have had much experience in matters of the kind may safely do this, possibly, in cases that are perfectly simple and free from complications. Still it is always more or less dangerous, for words are slippery and tricky creatures, whether they drop from the tip of the tongue or of the pen, and when used in important matters, cannot be too carefully watched or too strongly manacled.

No personal opinions are intruded and no hobby-horses ridden, in any part of this work. I have tried to give facts pure and simple, from which each who reads may form his or her own conclusions. If I have frequently used Massachusetts statutes and cases in illustration, it is by no means on account of any preference therefor, but merely because the statutes of that state were on my desk as I first wrote, and the reports of its judicial decisions on shelves within reach. Even had I had, at that time, any unconscious prejudice in favor of the interpretations that have been put on the law in the East, it would have been dispelled by my later experience in the courts of the far West, and my last revision of the entire manuscript, which is just completed, would have swept away any lingering traces of it. As it was, however, I concluded that illustrations might be drawn from the old Bay State as well as any other, so I let them stand.

The text of the work has been written with a view

to consecutive reading, the arrangement and treatment of topics being carefully planned so that the earlier should make way for and explain the later, and it is by such reading only that the applicability of its title may be most clearly perceived. Let me suggest then,—indeed, let me beg all who take up the book at all, to read it through attentively from the first page to the last, at least once. Afterward, it may be used for reference on particular points, with much better results than would otherwise be probable; and thus the purpose with which “Law Made Easy” was begun and completed, may be accomplished,—that of aiding the people to knowledge of a practical nature, which may be of real service in the every-day business of life.

LELIA J. ROBINSON.

Chicago, September, 1886.

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LAW MADE EASY.

CHAPTER I.

· HOW THE LAW CAME TO US.

*The Origin of Law—Common Law—Statute Law—
Judicial Decisions—Courts of Law and Courts of
Equity—Terms used to Designate Parties to a Suit
—Method of Arrangement of Topics in this Work.*

The Origin of Law.

The science of law is a grand, though complicated structure, which the experience of centuries has erected upon very simple and natural foundations. In the savage state, men have few laws. As they advance toward civilization, by acquiring property and forming themselves into communities for mutual profit and pleasure, new demands constantly arise for the protection of life and liberty, and of rights to such property; and laws must be framed to meet these necessities. But many of these laws prove inadequate for the purposes for which they were intended, and as time goes on, new exigencies also arise, necessitating changes and additions, the great aim of all legislation being to approximate as nearly

as possible to a legal system by which entire justice may be done to every one.

The English Common Law.

One of the best systems for the regulation of society which has yet been given to the world, is that known as the *English Common Law*. It had its origin centuries ago, and has grown with the growth of the English nation, being that law which "derives its force and authority from the universal consent and immemorial practice of the people." Part of it is so old that it has come down to us almost as matter of tradition, being "unwritten law" crystallized into form only in reports of ancient cases, every decision in which served as a precedent to be followed in after cases involving the same, or a similar state of facts.

Introduced into the British colonies in America at their settlement, the common law was adopted (together with such changes as had been made by statute in England down to the date of American independence) as the common law of the United States. Since then, each state has from time to time made such further alterations and amendments by statute, as have commended themselves to its legislature. Some of these variations from the old common law have been very great, resulting largely from corresponding changes which have taken place in the condition, views and aims of society. Thus during the last forty years, very marked changes of the most important nature, have been made in the legal status of married women, throughout the Union.

Statute Law.

The statutes by which the common law has been

modified constitute the "written law," and are to be found, *verbatim*, in the records of legislative enactments. It is a very interesting study to note the variations which have taken place in many important matters, by statutes successively framed to meet their requirements, from early English times down to the proceedings of some state legislature of 1886.

Judicial Decisions.

It is not always sufficient, however, to read the latest statutes on any given subject in order to understand what the law really is in regard to it. Unfortunately, legislators do not always use such words as will most clearly set forth the idea which they wish to convey. Irreverent lawyers have sometimes been heard to suggest that the idea itself may not always be entirely clear in the minds of the law-makers, or that their comprehension of the state of things which they frame a new law to meet, may not be as broad and complete as might be desired. But whatever the cause or causes, it is seldom safe to predict just what effect a new statute will have, until it has been construed by the highest court in the state in which that statute is passed.

In each state, regularly authorized publications of its statutes are issued, with successive supplements giving the latest action of the legislature, and these may be cheaply procured by the people. The judicial decisions by which these laws are interpreted are also reported and published, but the volumes are many and expensive, and are seldom accumulated in any valuable degree except in legal libraries, public or private. It is from these books of statutes and of reports that the material is obtained for legal text-

books and arguments in court. Whenever a question of law arises, therefore, it is necessary first to consult the statutes of the state, to ascertain whether the legislature has passed upon it; and then to search the reports of judicial decisions, and if possible, find precedents wherein the same or a parallel case has been decided by the court. A thorough familiarity with the old common law is also invaluable for the light it may throw on the subject.

When a judicial decision is once given on any point by the highest tribunal in a state, it becomes (if not contrary to the Constitution) practically the law on that subject throughout the state, and so continues unless, at a later date, this court overrules its former decision by a new one, or unless it is superseded by statute. Courts are very reluctant to overrule their own decisions however, and will do so only when it is clear that they were erroneous.

Courts of Equity.

There are two systems of jurisprudence, represented by Courts of Law, and Courts of Equity, before which different classes of questions may be brought, and which apply different systems of remedies; but in many states the same Court may hear matters both of Law and of Equity, applying the suitable remedies to each. There are some cases which may be brought for decision either in Law or Equity but preferably to the one or the other. Thus, in many instances Law can only give money damages to the injured party for failure of the defendant to fulfil an agreement, but Equity may compel the latter to perform the contract itself; and in such a case, if it be specially desirable that the contract should be carried

out, it is better to apply to Equity and compel performance. This reference to the two systems of jurisprudence is made here in order that remarks which will be occasionally found in the following pages, suggesting an equitable remedy, may be understood.

Parties to an Action.

In Courts of Law, the party who brings a case for trial is called the *plaintiff*; he who defends a case is the *defendant*. In Courts of Equity, the plaintiff is sometimes called the *complainant*; and in some classes of cases—divorce suits for instance—the parties are in many states called the *libellant* and *libellee*, the application to the court being itself called a *libel*; while in other states it is called a *petition* and the plaintiff is called the *petitioner*. For simplicity, the terms *plaintiff* and *defendant* will be generally used in the following pages, to denote the parties to any suit.

Arrangement of Topics.

The science of law may be regarded as a great circle with neither beginning nor end. It is thus almost impossible to start at any given point and clearly comprehend a single section of the subject, or segment of the circle, until some idea has been gained of all the others. The first reading, whether by one who studies law intending to make it a profession, or by one who reads merely for general instruction and information, must necessarily be done in somewhat of a blind, groping fashion, but it rapidly becomes more satisfactory and comprehensible as one advances. It matters little at what point of the circle we begin in this work. As everybody is likely to do something in the way of making bargains, the subject

of contracts, and the rules governing every bargain and every sale, may be of as general interest as any other to the majority of those into whose hands it may come, and will therefore be first considered. Other subjects will be approached by as easy and natural stages as possible, the arrangement being such that, as far as practicable, the earlier topics may explain and prepare the way for those that follow.

CHAPTER II.

DEFINITION AND NATURE OF A CONTRACT.

Definition—The Agreement—Oral and Written Contracts—Sealed Contracts—How Contracts may be Made—By Speech, Signs, Letters, Telegraph, Formal Written Documents, etc.—The Intent Important—Express and Implied Contracts—Three Ways by Which Contracts May be Implied by Facts—Contracts Implied by Law—Conditions in Contracts and their Effect—Conditions Precedent and Conditions Subsequent.

The definitions of a contract given by various authorities differ somewhat, but the following seems to be as reliable and simple as any:

A Contract is an agreement between two or more competent parties, for some legal consideration, to do, or not to do, a specified thing.

Every bargain is a contract. Every time that an agreement is made for the purchase of any article, that a servant is hired, or a ticket purchased for a railway journey or a musical entertainment, a contract is thereby made. The railway company agrees to carry you safely to your destination in return for a certain sum of money from you. If it fails to keep its agreement, you may sue for a breach of contract and recover damages,—that is a money compensation for your bodily injury, loss of property or delay.

Contracts are made continually in the every-day life of the humblest individual in society, and it is only by understanding the more essential rules by which they are governed, that one can act with any safety, even in the most ordinary affairs. These rules are as simple and direct as they can possibly be made, considering the complicated nature of many transactions which they must be framed to cover; and their general purport and intent is to aid honesty, to discourage dishonesty and trickery, to protect those who cannot well protect themselves, to effect the greatest good of the greatest number, and to further all the aims of true justice so far as may be done by human laws.

The principal points to consider in a contract, as shown by the definition, are four in number, namely:

The agreement itself;

The parties who are bound by the agreement;

The consideration;

The thing specified.

The first of these subjects will be considered now, and the others in following chapters.

Oral Contracts.

The agreement may be spoken or written.

Spoken or oral contracts are binding in all cases except those in which the law specially demands that they shall be written. With these exceptions, an oral contract is not only valid, but it is exactly *as valid* as it would be if put in writing. It is always well, however, that important agreements should be written out and signed by the parties, because they may thus be made more definite and explicit than oral contracts generally are; a clearer understanding between the parties may be secured; and they furnish better evi-

dence to submit to a judge or jury, it being difficult to prove oral contracts.

Written Contracts.

Of the contracts *required by law to be in writing*, there are some very important and extensive classes which will be referred to later, somewhat at length. [See Chapter 18.]

Sealed Contracts.

Some contracts must not only be written, but unless there are also seals affixed to the document, the agreement is not binding in any degree. Of these, the most common are agreements which in any way concern the conveyance of land, buildings or other real property. All bonds also must be sealed.

A seal is of great value when attached to any contract, whether it be required by law or not, its effect being to prevent any inquiry into the existence of a consideration. This will be better understood a little later on, when the subject of considerations has been examined. [See Chapter 23.]

Any wafer or other tenacious substance may be used as a seal. A little piece of colored paper applied with mucilage is in most general use. For some purposes, an impression stamped into the substance of the paper with a metal die is sufficient; this is the kind commonly used by corporations. In some parts of the United States, a mere flourish of the pen with the signature, or brackets inclosing the letters [L. S.], (meaning *Locus Sigilli*,—place of the seal) have been held a sufficient seal; more generally however, such a pen flourish has no legal value as a seal, and it is always far safer—except in the case of

corporations—to affix some foreign substance to the paper for this purpose.

How Contracts May be Made.

In the case of oral contracts, the agreement must be *very clear and explicit* in order to constitute it a contract. Mere talk *about* a contract, or leading up to it, does not make one. In all business matters it must be carefully borne in mind that words are delicate—and often dangerous—tools, and they should be used accordingly.

Written contracts may be *formal instruments* drawn up for the express purpose of binding the bargain; or they may be contained in *letters*, or sent by *telegraph*. They are equally obligatory on the parties to them in each of these cases.

Contracts may be made *by signs* as well as by words, as, in the case of dumb or dying people; of people so far from each other that speech is impossible; or of an auction, where the tap of the auctioneer's hammer expresses his acceptance of the bid, thereby concluding the sale.

The Meeting of the Minds.

The most vital element of every agreement is the *intent of the parties* to make it, expressed in some definite manner, and words or signs are only evidence of such intent. It is necessary, moreover, that both parties shall intend the *same thing* and at the *same time*, for there must be, as the law-books phrase it, a "meeting of the minds."

Keeping this in view, the principle upon which the next division of the subject rests will be made clear to the reader.

Express and Implied Contracts.

Contracts may be express or implied.

An express contract is one into which both parties deliberately and intentionally enter.

An implied contract is one arising from the acts of the parties, which may be such that in justice there ought to be a contract, and the law therefore raises or presumes one.

A large proportion of contracts in ordinary business are implied ones. It is on this principle that, if a newspaper is regularly left at your house, and you take it in and use it, sending no order to stop it, you are bound to pay for the paper as if you had formally subscribed for it.

How Contracts May be Implied.

A contract may be implied in three ways.

First, by *requesting* that certain work be done. Thus, if you leave an order on an expressman's slate, and in accordance therewith he calls in your absence and carries your trunks to the station, a contract arises to pay for the service, although no words have ever passed between you.

Second, by *voluntarily allowing* services to be rendered you, without objecting, you make yourself liable to pay therefor, even though you never requested or ordered them. The case of the newspaper, already cited, illustrates this.

Third, if without having had any knowledge at the time, of the performance of the work, you *accept it when completed*, the circumstances being such that you *might reject* it without any injury to yourself, a contract arises to pay it. Thus if, in your absence from home, your house being closed, a man comes without

orders and puts on a fresh coat of paint, on your return you cannot reject his work, because it is done upon your own house, and no contract to pay arises, even though you benefit by his labor. But if during your absence, a carriage-maker constructs a vehicle after some peculiar pattern which you are known to favor, and even decorates it with your coat of arms—if you have such an unrepugnant belonging,—deposits it in your carriage-house, and on your return you accept and use it, a contract arises to pay for it because you might have sent it back, or have sent a message to him saying that you had not ordered the carriage, and did not want it.

Some contracts are *implied by law*, independently of any action or intention of the parties. Thus, a man is bound by law to give reasonable support to his wife, and if she has left him through his own fault, and he makes no reasonable provision for her, an implied contract arises that he will pay for all necessities purchased by her. The element of agency comes in here however, which will be explained later. [See Chapter 7.]

As a general rule, *where there is an express contract, no implied contract can arise*. Thus, if a man expressly agrees to do certain work for one half the sum it is really worth, he cannot afterward disregard the agreement and sue on an implied contract for a greater sum, as he might have done had no binding agreement been entered into. There are occasional cases which seem to hold to the contrary of this, but it will usually be found that the contract in such instances was not sufficiently explicit, the rule itself being reliable. If however, a man agrees to work a *certain time* for a certain sum, and owing to his *em-*

ployer's fault, he cannot work the entire time, he may disregard the express contract entirely, and sue for a reasonable sum in payment for the work already done, on the implied contract which always arises to pay a reasonable sum for services rendered. On the contrary, if he *voluntarily* abandons the work, before the time expires, no fault of the employer causing him to do so, he cannot recover anything at all for what he has done, for he has broken his agreement, which was to work *a certain time* for a certain sum.

It might go far toward solving the puzzling questions of the present day concerning the relations of mistress and maid in domestic life, if these rules regulating contracts were borne in mind and acted upon in engaging servants, the agreement in each case being carefully worded and put in writing, the term of service, the duties required, and the wages to be paid, being definitely fixed.

Conditions.

Contracts sometimes depend upon *conditions*, by which they may be limited or restricted. These conditions may be precedent or subsequent.

A Condition Precedent is one which must be *performed* by the party whom it binds before he can compel the other party to the contract to perform his part. Thus, a tailor or dressmaker often expressly agrees that if the garments ordered do not fit well, and are not well made according to the order, they need not be taken when completed.

Conditions precedent are very common in all the ordinary transactions of life, and by taking advantage of them, and expressing them in clear, unmistakable

terms, one may protect himself from the danger of imposition, in numberless instances.

A *Condition Subsequent* is one which does not take effect until *after* the contract has been partly performed; but if the terms of the condition are not fully complied with when the time arrives for so doing, the entire contract becomes void, and the parties are replaced as they were before the agreement was entered into. Conditions subsequent are not favored by the courts, and are very strictly construed. It is therefore even more essential than in the case of Conditions precedent, that they should be clearly and exactly worded. They occur much less frequently than do the latter class of conditions, but a familiar instance by which they may be illustrated, is the arrangement sometimes made by which aged parents convey their property to a child or children on condition that they—the parents—shall be supported during their lives. Then if the children do not give such support, according to the terms of the agreement, their title to the property fails, and the parents may recover possession of it.

Instead of the contract becoming void, however, there are some cases in which the Condition subsequent may itself be void, the contract remaining good, as where it is *contrary to public policy*, or is *illegal* or *immoral*. Thus if a father leaves by will certain property to his son on the condition that the son shall never marry, the condition is null and of no effect, it being contrary to public policy to discourage marriage, and the title to the property vests at once and permanently in the son, relieved of the condition. So if a house or farm be devised by will on condition that the party to whom it is left, shall never sell it,

this condition is void, it being contrary to the policy of the law to allow property to be so tied up.

But a *reasonable restriction*—or condition—may be placed upon a gift, devise or contract, as that the party receiving the property shall forfeit it if he marries a certain person; or if he marries before reaching the age of twenty-five years; or if he attempts to sell or otherwise dispose of it within ten years; and the law will uphold it.

It is however possible to evade the law which forbids conditions in total restraint of marriage, by deeding property directly to a person to whom the title shall pass immediately, but *limiting* his ownership to such time as he shall remain unmarried, with the provision that at his marriage the property shall go to some other designated person. It is perfectly possible to give property to any one for any specified time; as during his life or during the life of a third person or for a term of years; so also during his unmarried state, and though this seems at first sight to be almost the same thing as conveying property on a condition that the grantee shall never marry, it is really very different. The rule applies, of course, to all other restrictions as well as to that against marriage, but the necessity of naming *another person* to whom the property shall go in case it passes away from the first grantee by the occurrence of the event provided against, must not be overlooked.

CHAPTER III.

THE CONSIDERATION OF A CONTRACT.

The Absolute Importance of a Consideration—Definition of Consideration—A Gift as Distinguished from a Contract—Consideration Implied by a Seal—Consideration Implied in Negotiable Paper—Consideration must be Valuable and Lawful—Various Kinds of Considerations—Implied Considerations.

Of primary importance to the life of every contract is the *Consideration*. Very many people do not understand this, and suppose that a mere promise to do a thing constitutes a binding contract. Morally speaking, of course, a bare promise is binding, but from a legal point of view, this is not true, whether the promise be oral or written. One is legally bound to keep his promise only when he receives something in return for it from him to whom he makes it; and that which he receives constitutes the consideration.

Definition of Consideration.

Any benefit, however slight, to the party who promises; or any loss, however slight, to the other party, is a sufficient consideration for the promise.

Thus, when you order supplies from any dealer, and he sends them to you, the goods which you obtain are the consideration for your promise to pay for them; you have received a benefit. So, too, on

the other hand, if you order provisions sent to your house, but leave home immediately, and before you return the provisions are spoiled, although you have received no actual benefit the other party has sustained a loss on your behalf, and you are therefore bound to pay him for the supplies.

The consideration *need not be proportionate in value* with the promise. A very slight consideration is sufficient. Extensive conveyances of real estate are sometimes made "in consideration of one dollar and other good and valuable considerations." In such cases the transfer is often a gift in reality—though not necessarily so—, but it is considered desirable to give it the form of a business transaction. The same expression, "on consideration of one dollar and other considerations," is often used in contracts binding one person to render important and valuable services to another. In these cases, this is the consideration for the *promise* of the former party *to render* the services. The consideration for the services themselves—that is, the payment for them—, will probably not be given, and possibly not even be fixed, until they have been performed, and it may not be mentioned at all in the preliminary contract. The phrase "other good and valuable considerations" may refer to the interchange of mutual promises, etc.; no other tangible consideration need really pass between the parties than the one dollar.

It has been held in a few cases that a very small sum of *money* given in consideration of a promise to pay a large sum of money, as \$1.00 for a promise to pay \$1000, is not a good consideration and that the contract is not binding. This is doubtful law, but it would be safest

not to make such a contract when the consideration on both sides is money.

A Gift as Distinguished from a Contract.

The consideration distinguishes a contract from a gift, being essential to the former and absent in the latter. It should always be borne in mind also in regard to a gift, that *immediate transfer of possession* from the giver to the recipient is necessary in order to pass the title to the latter and enable him to claim it. A mere promise, without a consideration, to make a gift at a future time is not binding and cannot be enforced. [See Chapter 15.]

Consideration Implied by a Seal.

There are cases in which the consideration, though not actually named between the parties to a contract, is *implied*,—that is, presumed by the law to be intended by them. This is true of *all sealed contracts*, with one or two exceptions which need not be specially referred to here. The law has always held that, by the act of affixing a seal to one's signature, he declares that he has received a consideration for his promise, and the truth of this implied declaration cannot be inquired into. Thus it is that *any question as to the existence of a consideration cannot be raised in regard to a sealed contract*, and it is very useful in many cases, to affix seals to signatures for this purpose, even when the law does not demand them.

In a very few states, less weight is given to the effect of a seal; as in New York, where a seal is only *presumptive* evidence of a consideration, in case there is no evidence to the contrary; but one may prove, if he can, that no consideration really passed, and then the seal becomes worthless for this purpose.

Consideration Implied in Negotiable Paper.

The consideration is also *implied in regard to promissory notes* which have been properly negotiated. [For explanations concerning promissory notes, negotiation, etc., see Chapters 11-12.] Thus if you hold A's note for \$100 which he gave to B, from whom you bought it in good faith, knowing nothing of the circumstances under which B received it, you can recover the \$100 from A when the note becomes due, even though he can show that he never received any consideration from B for it. Between the immediate parties to the note, however, this presumption of a consideration is not conclusive; thus if B, in the case above, should keep the note *himself* and attempt to sue A on it, A could then show in defence that he had never received any consideration for it.

Consideration Distinctly Set Forth.

The consideration should always be stated in the contract; but if, by any accident it is omitted from a written agreement, it is possible to prove it by oral evidence. It is vitally important in every case, spoken or written, that the consideration should be *distinctly named and understood* by all the parties to the contract.

Consideration Valuable and Lawful.

The consideration must be one which is of some pecuniary value, or capable of being thus estimated. A promise "in consideration of love and affection," or of "duty," is not sufficient, and such a promise would not be binding. The consideration must also be lawful—violating no law of the land, no rule of public policy or of good morals.

Various Kinds of Consideration.

Any *compromise of a claim* whose validity or binding force is *in dispute* between the parties to it, is a sufficient consideration for the promise of one party to pay the amount, or do the act, fixed upon by the compromise.

So any agreement by one who has the *right to bring suit* against the other on any claim, that he will *forbear to exercise such right*, is a sufficient consideration for a promise by the other to pay more money or to do some further act.

Even *mutual promises* may be sufficient considerations for each other. A very large proportion of the contracts of every-day life are based on this kind of consideration, and in many of these it might appear, on casual observation, that there was no consideration at all, for it is the promise itself, and not its fulfilment, which is the consideration. Even a minor's promise, though not enforceable at law, is a sufficient consideration for an adult's promise, which is enforceable. [See Chapter 5.]

Thus in marriage engagements, the consideration for the promise of each party, is the promise of the other, and to sustain an action for breach of promise in such a case, it is necessary to prove that a *mutual* agreement was entered into, either by express words or fair implication. If only one party promises marriage, the other cannot hold him to it.

Implied Consideration.

It is not absolutely necessary to the validity of a contract that the promise should be expressly given, an *implied promise being often sufficient*. Thus as is suggested in the case named above, if one promises

marriage in spoken or written words, and the other does not reject the promise so made, and by acts allows a reciprocal promise to be inferred on her own part, the contract is as complete and valid as though the most binding words were used on both sides.

This doctrine of implied considerations is carried so far that one who agrees to perform some *gratuitous service* for another, is *bound to perform* such service well and carefully. Thus, if you agree to carry some valuable jewelry from your friend in one city to a mutual friend in another place, and you are so careless of the property intrusted to you that you lose it, when by the exercise of a little care you need not have done so, you can be held responsible for the damage sustained, on the promise which was implied from your accepting the trust, that you would take care of the property while it was in your possession; and the consideration for your implied promise was the *trust and confidence* which was reposed in you. This is an exceedingly fine point in law, over which judges and lawyers have disputed for centuries, and it may not be easy to comprehend it fully, but every one can understand that he should never make thoughtless promises to perform gratuitous services, unless he is willing to take the trouble to do them well and thoroughly, lest he be held legally responsible for any carelessness in the matter.

CHAPTER IV.

THE ASSENT OF PARTIES TO A CONTRACT.

*Importance of Assent—Assent Must be Mutual and Concurrent—It Must not be in Jest nor Under a Mistake of Fact—Mistake of Law no Excuse—Mistakes as to Identity and as to Quality—Leasing House Unfit for
• Occupancy, Furnished and Unfurnished—Contract Invalidated by Fraud—Essentials of Fraud in the Legal Sense.*

It has already been said that to effect a contract, there must be a meeting of the minds. That is, *the assent of both parties* to the contract in all its parts, is essential.

Assent Must be Mutual and Concurrent.

The assent must be *mutual*, and it must be *concurrent in time*.

If you make a business proposition to your neighbor to-day and he does not accept it, nor act in a manner to lead you to suppose that he wishes time in which to consider it, and a month hence he comes to you, brings up the subject and says that he accepts your proposition, no contract is thereby created, and he cannot hold you to your offer, unless you have agreed to *keep it open* all that time. His acceptance of your offer must be given within a "reasonable time," which is usually considered to be but a few days, or perhaps

only a few hours; and even within that time, you may expressly revoke your offer if he has not already accepted it, thereby freeing yourself from liability thereon.

Assent Must Not Be in Jest.

Nor is a contract binding which is entered into in mere jest; as in the case of mock marriages, even if the knot be sportively tied by an ordained minister, or justice of the peace. There is no marriage, because such was not the real intention of the parties, however solemnly the words may have been spoken. (But it is usually advisable in such a case to secure a judicial decree annulling the marriage to avoid any possibility of future questions on the subject).

Mistake of Fact.

The assent of the parties must be given with a *fair and correct understanding of the facts* of the case in order to make a binding contract, and not under any mistake concerning them, for in the latter event, no assent is really given to the contract as it stands. It is often very difficult to *prove* that such a mistake existed however, and it is therefore vitally essential that the subject matter of any contract should be fully understood by all the parties to it, and clearly expressed in words.

Mistake of Person.

A mistake as to the person with whom the contract is made, is such a mistake of fact as will invalidate a contract. A very good case in illustration of this statement was tried in Massachusetts a few years ago, which the reporter's head-note thus sums up.

"A who had bought ice of B, ceased to take it on

account of dissatisfaction with B, and contracted for ice with C. Subsequently B bought C's business and delivered ice to A, without notifying him of his purchase until after the delivery and consumption of the ice. The court held that B could not maintain an action for the price of the ice against A."

It will be seen, therefore, that one may choose the parties with whom he will have business relations, and that if he supposes himself to be dealing with C, B cannot force himself into the bargain, without A's consent or knowledge, and gain any claim upon him. No contract can be implied in such case, for the mutual assent was lacking.

Mistake as to an Article.

Mistakes as to the article contracted for may invalidate a contract. Thus if the contract be for the sale of a particular horse, and some other horse be delivered, however innocent the seller may be of intent to deceive, the contract is not fulfilled thereby.

Or to take an illustration more familiar to the sex that "goes shopping," if you send a message to a dry-goods establishment, asking for a certain number of yards of all-wool goods of a specified kind, and the article sent proves to be partly cotton, no contract arises, and you need not pay for it, but send it back. Or if you have already paid, either the money must be refunded, or other goods sent as ordered. But if, instead of sending a message in the first instance, you visit the store in person, and *choose* the particular piece of goods, even though you say to the clerk that you wish it to be all-wool, you will have to abide by your own selection, for it is supposed that you best know the material you want when you see it. It

is not even safe to rely on oral warranties, especially if given by clerks, for the question may well arise whether the clerk is authorized to bind his employer by a warranty. The only safe way is to get a warranty directly from the head of the establishment and if possible in writing.—[See further as to Warranties, Chapter 17.]

Mistakes of Identity and of Quality.

The great difficulty in these questions of mistake is this; that, though a mistake in the *identity* of an article will invalidate a contract for its sale, a mistake as to its *quality* (that is as to its fitness for the purpose intended) will *not* do so, except when the selection of the article is intrusted to the judgment of the person who sells it; and it is often a very difficult matter to decide under which head a mistake comes.

Thus it has been repeatedly held that one who sells or lets an *unfurnished house*, representing it to be fit for immediate occupation, when in reality, unknown to him, its drainage is defective, or it leaks badly, or has just been vacated by small-pox patients, can hold the purchaser or lessee to his bargain. The mistake, the misrepresentation—is only one of quality. But it has been held in a couple of English cases, that the contrary is true of a *furnished house*, let for a *short* time, and that a warranty, either expressly given or implied, that such a house is fit for occupancy, may be relied on by the buyer or lessee.

This matter is treated in a very brief and pointed fashion in Shirley's "Leading Cases Made Easy."

"Implied Warranty on Letting Furnished House, *Smith v. Marrable*, 11 M. & W.

5 BRUNSWICK PLACE, Sept. 19, 1842.

"Lady Marrable informs Mrs. Smith that it is her determination to leave the house in Brunswick place as soon as she can take another, paying a week's rent, as all the bedrooms but one are so infested with bugs that it is impossible to remain."

"And, in pursuance of this determination, the Marrables moved out, and Smith went to law with them, alleging that, as they had taken the house for five weeks they had no business to leave in this summary fashion, bugs or no bugs. The Marrables, on the other hand, successfully contended that it is an implied condition, in the letting of a furnished house, that it shall be reasonably fit for habitation; and that, if it is not fit, the tenant may quit without notice."

"The famous bug case, after having been spoken disrespectfully of for many years, has, in these latter days, been expressly affirmed by the case of *Wilson v. Finch Hatton* (2 Ex. Div.), where its principle was applied to stinks arising from defective drainage. It is to be observed that it is only in the case of *furnished* houses that reasonable fitness is an implied condition. In general, there is no such implied covenant by the lessor of land or houses, nor even that the house will endure during the term. Fraud and deceit, however, may make a difference."

Fraud Invalidates a Contract.

As the last sentence implies, if one should warrant an unfurnished house to be fit for immediate occupation, *knowing* that it is not, owing to hidden or latent defects, which the purchaser or lessee would not be likely to discover for himself, he (the owner) is then *guilty of fraud*, which when practised by one party

to a contract on the other, will invalidate *any* contract, for where one party is deceiving the other, it is clear that there can be no mutual assent. (The essentials of fraud, which will be presently given, must all be present, to invalidate a contract.)

Fraud may be practised by *concealing* matters of importance, as much as by spoken falsehoods. The sin of omission is nearly or quite as great as that of commission. It is important that a witness on the stand should tell "the whole truth" as well as "nothing but the truth," and so it is regarding representations by parties to a contract in dealing with each other concerning it.

Essentials of Fraud.

Not all false statements or wrongful concealments constitute fraud in a legal point of view, so as to invalidate a contract. There are certain essentials which are absolutely necessary.

First, the false statement must be one of *material fact*. One that concerns some point immaterial to the actual subject-matter of the contract will not affect it; neither will a statement, however false, of *mere opinion or judgment*.

Second, the false statement must be made with *knowledge of its falsity to a party ignorant thereof*, and who could not discover its falsity by the exercise of ordinary care; for both parties are bound to use care in such a matter.

Third, it must be made *intending that it should be acted upon*, and

Fourth, it must have *been acted upon* by the other party to his *damage*, before any cause of action for fraud arises, or any good defence to a contract

on the ground of fraud can be made. For when all these essentials combine, not only a good defence is established which will relieve one from the contract itself, but he may bring a civil action in tort, to recover damages from the party who has thus injured him. [See Action for Deceit, Chapter 38.]

Many fine points are constantly arising on these questions of fraud, out of which grows a very large proportion of all the litigation in our Courts, and in regard to which the best-read lawyers disagree. It would be quite impracticable to attempt to go into the subject here at any length. In fact, there is no accepted definition of the very word "fraud," judges themselves having carefully avoided drawing lines by which to bound it, the fertility of human genius for deception being such that it would soon outgrow any definition that might be made.

It is amply sufficient for the purpose of this work, however, to impress upon the mind of every reader that *absolute honesty and fair dealing* are essential to the validity of all contracts; and if one discovers at any time before or after making a contract, any indication of deceit by the other party thereto, he should take legal advice immediately.

Mistakes of Law.

A mistake concerning the *legal purport* or binding force of a contract does not invalidate it, for unreasonable and often almost unjust as such a rule seems, *every person is bound by law to know the general public laws* of the state or country wherein he makes a contract. He is not merely presumed to know them, but *bound* to do so, the results of ignorance being visited on his own head—or pocket—as are those of any other

wrong of which he may be guilty. Thus, if you are in New York and enter into a contract there, it will be presumed by the Courts, should any litigation arise concerning it, that you were cognizant of the laws of New York and framed the contract in accordance with them, even though they be directly contrary to those of your own state on the same subject.

As a matter of fact, very few people, except those who have made them a special study, do know many of the laws of their own state. The reason of this rule, which at first may appear too severe, is easy to see, however, for if ignorance were an excuse, fraud would multiply indefinitely in all the relations of life, since every dishonest man who wished to avoid his contracts, would plead ignorance of the laws by which they were governed, and the same plea could be successfully made in defence of dangerous criminals from other states or countries.

As to Law of Another Country.

Mistaking the law of *another* country or state than that wherein the contract is made and is to be enforced, may invalidate it, as such a mistake is held to be only one *of fact*, no state acknowledging the laws of foreign states *as law* within its own borders, but only as matters of fact, to be proved by evidence like other facts. (Each of the United States is foreign to all the others, in this sense of the term.)

As to Private Rights.

So with certain *private rights* concerning one's own personal legal liabilities, in one's own state; ignorance of them may invalidate a contract, being only a mistake of fact; but these cases are too rare to consider

further here. The main fact, however, should always be borne in mind, that *one cannot plead ignorance of the law* to avoid the legal results and liabilities of his contracts, or of any breach of the criminal laws.—[In rare cases, a Court of Equity will annul, or alter, a contract made under a mistake of law.]

CHAPTER V.

COMPETENCY OF PARTIES TO A CONTRACT.

Infants or Minors—Age of Majority—Infants' Voidable Contracts—Giving Credit or Loaning Money to Infant—Labor Performed by or for Infant—Who May Set Up Defence of Infancy—May Ratify Voidable Contracts at Majority—Emancipation of an Infant—Infants' Binding Contracts—Necessaries or Luxuries—Marriage and Promise to Marry—Infants' Responsibility for Torts and Crimes—Competency of Married Women to Contract.

In order to give such an assent to a contract as will be binding, the parties to it must be *legally competent* to contract. A child cannot often bind himself, nor can an insane or intoxicated person. Of course, it is easy to see that no intelligent assent can be given by one whose mind is disordered, or who has not arrived at years of discretion.

Infants or Minors.

It has been found necessary to establish strict rules as to exemptions from contractual liability, and all possible efforts have been exerted for centuries past to make these rules as just and equitable as possible. It is true that many young people of eighteen or twenty years of age are quite capable of business dealings, and do, in point of fact, provide entirely for

themselves. But it was found advisable, long ago, and the rule has never been altered—except in some states in regard to girls—to make twenty-one years the age at which one should be legally capable of binding himself by contracts, and until that age is attained, fathers of children are bound to maintain them in a reasonable manner, if pecuniarily able.

The exact time at which majority is attained, is at the beginning of the day preceding one's twenty-first birthday, fractions of a day being disregarded in law. In most states the age of majority is the same for both sexes, but in a number of others, Vermont, Maryland, Ohio and Illinois among them, girls are of age at eighteen, and in a few, girls attain their majority by marriage, even if they marry before they become eighteen.—[See Abstracts, Title "Age of Majority."]

Until legally of age, all persons are infants in the eye of the law, and are so termed in legal works.

Infants' Voidable Contracts.

As a general rule, contracts made by infants are not absolutely void, but only *voidable*. That is, they are binding upon the infant unless he avoids or disclaims them in a proper manner, either during his minority or within a reasonable time thereafter.

If an infant purchases something not at all necessary he may rescind the contract, tender back the article which he has bought, and demand his money.

If the thing thus returned is in as good condition as when he received it, there is little doubt that he can regain his money. It has sometimes been held that he can recover the purchase money when the article returned is injured, or even when it has been entirely used up or destroyed. But the general rule prob-

ably is, that when the infant has received a *fair equivalent for his money*, even if the article bought was not a necessity, he cannot recover the money back.

If, on the contrary, an infant buys an article, not a necessary, and *credit* is given him for it, he may defend successfully any suit brought against him to recover its price. The seller is *bound to know* whether the party to whom he gives credit is an adult or a minor, and if he trusts one of whose age he has no knowledge, he does it at his own risk; but if he sells for cash, he is not bound to exercise the same degree of caution. If one *loans money* to an infant, even though it be to buy necessities, the debt may be avoided by the infant, and the creditor cannot compel payment. But if, instead of loaning the money directly to the infant, one goes to a store; boarding-house or any vendor of necessities, and orders *certain supplies* of food, clothing, shelter or other necessities to be furnished to the infant, and *pays for them*, such payment constitutes a valid debt against the infant, which he may be compelled to pay, providing, of course, that he has accepted such supplies and profited by them.

If an infant sells property of his own, he may recover it by an action at law from the purchaser, and he may recover it even from a *third person* to whom it has been sold in turn. The purchase money paid the infant, cannot generally be recovered from him in such a case.

If the contract be for his labor, the infant may sue and recover a *reasonable sum* for the work he has done, even if he has not worked the entire time agreed upon, thus differing, it will be observed, from the case of an adult. The infant is not bound by his express

contract, and therefore the implied contract arises.

If the infant has *paid out money for labor*, though not a necessity to him, and a fair equivalent has been performed, he cannot recover back the money.

Who May Set Up Defence of Infancy.

Not only the infant himself, but his *guardian*, or, if he is dead, his *executors or administrators* or his *heirs at law* may avoid his contracts. But *an adult cannot* avoid a contract on the ground that the other party to it is an infant. The adult is bound as much as though he were dealing with another adult, for this rule of law is only intended for the protection of the infant, who is supposed to be incapable of protecting himself. (Sometimes in cases of peculiar hardship, Courts of Equity will relieve an adult from the contract into which he has entered with an infant.)

Nor can a *third party* set up infancy as a defence. For instance, if, just before he is of age, an infant makes a contract disposing of all his property, and after majority makes heavy purchases for which he is unable to pay, the creditor cannot in any way cause the former contract to be set aside, that he may get the money due him,—unless indeed, he can show that the transfer of the infant's property was made with the express intent of *defrauding subsequent creditors*; for fraud will invalidate any kind of contract or conveyance. Thus if, just before majority, an infant transfers his entire property to a relative or friend, ostensibly in payment for board, subsequent creditors may claim their money out of it if they can prove that no such debt for board really existed, and that it was the intention of the parties to transfer the property back again, at a later date, to the real owner.

May Ratify Voidable Contracts at Majority.

When an infant attains his majority, he may ratify any voidable contracts made by him during minority, and they will then be binding on him. He may ratify such a contract by *express words*, acknowledging that the debt is a good one and promising to pay it, or he may impliedly ratify it *by his acts*. Any act, after majority, by which he avails himself of the benefit of the contract, or shows an intention so to do, will ratify it, and he will not afterward be permitted to disavow it. Thus if an infant buys a horse, and after majority, continues to use him, he will thereby ratify the contract or purchase. Or if he sells his real property, and allows the purchaser to continue to live thereon after majority, knowing that the purchaser is making improvements on the land, this constitutes a ratification.

The right of avoidance, if availed of at all, must be exercised *very promptly and decisively*.

Emancipation of an Infant.

Many suppose that if a minor is "emancipated"—that is, has his time given him formally by his father—he may do business for himself, and be bound by his contracts; but this is not so, and no published notice of his emancipation can make him responsible. He is no more legally bound by his contracts than he was before—unless, as in a few states, some statute especially gives him such responsibility.

Even if he misrepresents his age, and declares that he is twenty-one, parties dealing with him are not protected; they must, at their own risk, ascertain the actual fact, and act accordingly. It is however, sometimes possible in such a case, by applying to a

Court of Equity, to get relief on the ground of the infant's *fraud* in declaring himself to be of age. Bankruptcy Courts have also occasionally held infants bound to their business contracts on the same ground of fraud.

Infants' Binding Contracts.

There are some contracts that are absolutely binding upon all minors, and these constitute a very large exception to the rule that minors cannot contract. The most important of these are *all contracts for necessities* purchased by a minor who is uncared for by parents or guardian, for his own use, or for that of his wife and children if he be married. He is only bound to pay *a reasonable price* for them, and may defend against any extortionate demand, although he agreed to it when he made the contract.

Necessaries or Luxuries.

The great point of dispute generally arising in such cases is whether the articles in question are necessities or luxuries, and the decisions on this point have widely varied in the different courts. The condition of life and style of living are taken into consideration, and what would be a necessary for one may be held to be a luxury for another. Board, lodging and clothing, all in accordance with his means, are of course necessities. So is a good education; but a collegiate education has been held to be a luxury. *All proper personal expenses* are within the class of necessities; though this is an indefinite way of stating the rule, the facts of the particular case being always taken into consideration by the judge and jury.

In Massachusetts it has been held that a minor is

not bound to pay for necessities bought by him while living with his father and cared for by him. One who gives credit to a minor for necessities is *bound to know* that he is not living under his father's care, for if it be proved that the father provides properly for his child, the latter cannot be held responsible for necessities furnished him by any one else; nor can the father be held therfor, unless it can be shown that the child, when he made the contract, acted as his father's *agent*, either at his express request, or by fair implication. [See Agents, Chapter 6.]

Thus, if a lad, living at home and properly cared for by his father, should go to a tailor and order a suit of clothes, reasonable in price and suited to his condition in life, and the tailor should fill the order, on the strength of the boy's promise to pay for them, knowing that the boy had, or would soon have, property of his own, he could never enforce the contract against the boy.

There is a somewhat peculiar statute in Massachusetts for the protection of students, which, though doubtless intended specially for the protection of minors, applies equally to all students of the classes specified, whatever their age. It provides that "no inn-holder, tavern-keeper, retailer, confectioner, or keeper of a shop or house for the sale of drink or food, or a livery-stable keeper for horse or carriage hire, shall give credit to a student in an incorporated academy or other educational institution within this state."

There are a very few contracts, other than those for necessities, by which infants are expressly allowed, by statute, to bind themselves. Thus a male infant may enlist in the army or navy if his father consents, and bind himself thereby.

Marriage and Promise to Marry.

Contracts of marriage are binding at common law, if the boy is fourteen and the girl twelve. [See Chapter 31.]

If a minor gives a *promise to marry* at some future time, such promise binds him no more than any other contract, and can only become binding if he—or she—ratifies it after majority.

Infants' Torts and Crimes.

Minors are entirely *responsible for their torts and crimes*; that is, for *any* wrong-doing which is not of a *contractual* nature.

(A tort is any wrong against an individual, for which he may bring an action to recover damages. See further, Chapter 38. A crime is any wrong against the public, for which the wrong-doer may be prosecuted and punished. See further, Chapter 36.)

If an infant over seven years of age violates the criminal code, he may be tried, convicted and punished. So if he commits a wrong against an individual, as by slander, assault and battery, negligence, or other tort, the injured person may have an action against him for damages, as against an adult; and if he has any property, he must pay them. Thus if a boy throws a stone and breaks your window, or kills your horse, the boy's father is not at all responsible; your only resource is against the boy himself.

The parents of a child are often bound by his *contracts*, but this is only on the ground of agency, a subject which will be considered in the next chapter.

Competency of Married Women to Contract.

By the old common law, married women were even

less able to contract than infants, for the latter class could bind themselves and their property by contracts for necessities, while a married woman could not even do this, except in a few rare cases, as when her husband had fled from the country, or had taken monastic vows, or had never been in the country.

With such few exceptions, then, a married woman at common law could not make a contract, unless it concerned her own property, which, however, was not in her own possession, but *held by trustees* for her sole and separate use, to pay over the income to her. Courts of Equity allowed her to make contracts concerning such separate property.

She could however, act as agent for her husband, as will be shown further on.

One important distinction between the disability of infants and of married women to contract, is that the great majority of contracts made by *infants* are *merely voidable*; that is, they are susceptible of being avoided by the infant at majority, or of being ratified by him. The contracts which he avoids, become null and of no effect; but those which he ratifies are made good and binding from the time when they were first made. But a *married woman's contracts*, are *absolutely void*, and incapable of any ratification after she becomes a widow or is divorced.

This distinction between void and voidable contracts is an important one, and should be remembered. *Voidable contracts are susceptible of ratification; void ones are not.* [See further concerning married women, Chapter 30, and Abstracts, Title "Married Women."]

CHAPTER VI.

COMPETENCY OF PARTIES, CONTINUED.

Lunatics or Insane People—Intoxicated Persons—Spend-thrifts—Executors Administrators and Guardians—Agents—How to Create an Agency—By Oral Instructions, Power of Attorney, or Implication from Acts—How to Terminate an Implied Agency—Extent of Agent's Authority—General Agents and Special Agents—The Child as Agent of His Father—Termination of Child's Agency—Separation by Fault of Father, or of Child, or by Mutual Consent.

Another class of people who are not competent to bind themselves by contracts, except for necessities, are those who are *so insane* as to have no intelligent idea of the nature and purport of their acts. The contracts of such a person are *only voidable*, and may be ratified after he recovers his sanity, unless he was actually *under guardianship* at the time of the contract, in which case it is generally held to be absolutely void.

Intoxicated Persons.

The same rule applies to drunkards, the test being as in the former case, whether or not an intoxicated person is *able to understand* what he is doing when he makes the contract, and this is for the jury to decide from the evidence. If he does understand it, the requisite assent is given, and the contract is binding.

Otherwise it is voidable, and may be ratified or avoided by him on recovering his senses, unless it be for necessities, when he will be bound to pay a *reasonable price* for them in either case.

Spendthrifts.

Parties who have been judicially declared spendthrifts, and placed under guardianship, are under the same disability to contract.

Executors Administrators and Guardians.

As has already been stated, every one in his right mind, who is not under any disability, may make any contract which is not unlawful or immoral, and it will be binding upon him. In many cases he may also bind others by his contracts. Executors and administrators may bind the estates of the deceased, and guardians may bind their wards. The duties of these parties will be stated later [see Chapters 29 and 30], and a very important class known as agents will now be considered.

Agents.

It is very obvious that, in the complicated relations of modern life, it is quite impossible that every one should attend personally to all the business and labor which he requires to have done, and that very much of it must be delegated to others to do for him. Hence arises the relation of agency, which is governed by two correlative maxims, viz :

Whatever one may do himself, he may do by another; and what is done by that other is deemed to be done by the party himself.

Were this not so, there would be no safety in general business ; no one would dare fill an order brought

by a servant, however trustworthy the master who sent him, if the contract made by the servant on his behalf could not be made to bind the latter. It is only through the doctrine of agency that the wheels of the modern business world run smoothly.

All persons may act as agents. Even a child may be an agent in the most important matters.

How to Create an Agency.

An agency may be created by *oral instructions* given by one to another, to perform some act; or it may be by a formal written "*power of attorney*," enabling one person to act as the representative of another, either in a single matter or class of matters; or by a *general power* to represent him in all business.

It is *not essential* that a written authority be given an agent, in order that he may bind his principal by his acts, unless among them may be the execution of sealed instruments, as deeds, mortgages or bonds. To perform these latter acts and bind his principal thereby, the agent must have written authority which is itself under seal. For all other purposes, it has been generally held that oral instructions are sufficient; but it is always better in all important matters, that the agent should be authorized by a formal power of attorney.

In a great multitude of smaller affairs, however, and in some of importance, the authority is not given to the agent either orally or in writing, but by *implication from former acts* of the parties. These implications very frequently arise in everyday life, every purchase of meat or groceries made by the cook being a case of implied agency binding her master to pay for them. Indeed, if the purchases are made by the mistress of

the house—she being a married woman—it is equally a case of implied agency, binding her husband to make payment, the agency in this case being implied from the relations of the parties. [See further on this subject, Chapter 7.]

Notice to Terminate Implied Agency.

An implied agency generally arises from the fact that the principal has allowed the agent to *act repeatedly* for him *in certain ways*, knowing that he did so, and making no objection. If, instead of this, he gives public notice that no such relation of agency exists, and that he will not acknowledge or be bound by any acts of the party who claims to be his agent, the agency is thereby ended. In the case of a servant or other employé, to *discharge* him is usually sufficient notice to the world that the agency is ended.

In many cases, however, it is necessary, or at all events safer, to *publish a notice* in the newspaper, or to post it in some public place. If no public notice is given, but private instructions are given to certain tradespeople or others, not to trust a former servant or agent on the master's behalf, this is sufficient, and a person who has thus been notified cannot claim payment from the latter if any further credit be given to the former agent on the principal's behalf. No notice at all can generally be claimed by persons with whom the principal has not transacted business during the continuance of the agency.

Notice Must Be Prompt.

It must be remembered that a principal must always *act promptly*, if he does not intend to ratify by implication a contract which a party has purported

to make as agent for him. By negligence in the matter he may find himself bound. Thus if a son goes to a tailor's, orders a suit of clothes and has them charged to his father; when the bill is sent, if the father does not intend to pay for them, he must promptly send word to the tailor that the son had no authority to get the clothes. If, on the contrary, he throws the bill into the waste basket, thinking that the tailor had no business to give the boy the clothes on his account, and fails to send any word, he impliedly ratifies the act of his son, and makes himself responsible for the clothes.

Extent of Agent's Authority.

In some cases, an agent has a *general power* to do all business for his principal, or all business of a certain kind. In others, he has only a *special power* to do a particular act or acts. In the latter case, the authority of the agent is *strictly limited* by his instructions, and people dealing with agents are bound, *at their own risk*, to ascertain the extent of their authority; though, as has been said, a general authority may sometimes be implied from previous dealings.

Thus, if a lady sends a servant to the market to buy provisions, having often before sent the same servant on similar errands, paying the bills when presented, and on this occasion gives her special orders to buy lamb and green peas, but she buys pork and greens instead, the market man is justified in sending the pork and greens, and unless they are returned to him, they will have to be paid for. This is because, by previous acts, the servant has been made a general agent to purchase provisions. But if instead, she be

sent to a dry-goods store, to which she has never gone for her mistress before, to buy a few yards of calico, and she buys instead a dress pattern of valuable silk and runs off with it, the merchant who has charged the silk to the lady has taken his own risk, and the loss is consequently his. He should have ascertained the extent of her authority.

The right of a servant or similar agent, to bind his principal, arises, not from the relation of master and servant, but from the fact that the master has *repeatedly sanctioned* contracts which the servant has made for him. There are certain relations of life, however, the *very existence* of which raises an implied agency between the parties. These relations are only two—that of *father and child*, and of *husband and wife*.

The Child as Agent of His Father.

The *child*, as such, is his *father's* agent, because the father is obliged by law to support his minor children. *The mother is not thus bound*, and the child is consequently not the legal agent of the mother in the same sense. Of course, a child may be the agent of either parent by express authority, or by the usual implication arising from continued acts of agency recognized as such by the parent. But the agency here referred to is independent of these rules, being an *absolute agency* by which the father is bound, without regard to his wishes or intention in the matter. It extends, however, only to the purchase of *necessaries* by the child for his own use, and arises only in cases where the *father does not voluntarily* supply them. So long as the child lives with his father and is properly cared for, no agency arises by which the latter is bound to pay for articles which the child may fancy. In such

a case, by refusing to acknowledge or to pay debts of the child's contracting, or by giving notice to shopkeepers forbidding them to sell to the child on credit, he may relieve himself from all liability:

But if he turn his minor child out and refuse to provide for him, the latter may then provide himself with necessities at his father's expense, and any one who furnishes them may collect the amount due.

Step-Children.

The general rule is that a step-father is bound to support his step-children equally with his own, *if he has once accepted them* as such by making them part of his family; but otherwise not. •

Termination of Child's Agency.

If a child *voluntarily leaves* his father's protection against the latter's will, his agency thereby ceases, and no claim for his support can be collected from the father, even though the party supplying necessities is ignorant of the cause of the child's leaving home. It is his business *to ascertain the cause*, and if he fails to do so, he trusts him at his own risk.

If the separation is by *mutual consent*, the child being "given his time," the agency also ceases, and the father cannot be charged with necessities supplied the child. In such a case, the party who furnishes them can only look to the child for payment, who, it will be remembered, is bound by his contracts for necessities. In Massachusetts, this matter is equalized very justly by making the child responsible for necessities purchased by him, *only* when he is not living at home under his father's care.

In a few cases, it has been held that, if a child who

has been emancipated and is taking care of himself, becomes ill and unable to work, one who cares for him may charge the father with the expense, but this is very doubtful, and not to be relied on.

If, however, after being made aware of the helpless condition of the child, the father agrees to pay the expenses which may arise during his illness, he becomes responsible thereby, just as he would be if the child had passed his majority, or even in the case of a stranger. And sometimes, too, the father—or mother—may be made responsible for the support of a child who is unable to care for himself, by force of the “poor laws.” [See further, Chapter 30.]

CHAPTER VII.

COMPETENCY OF PARTIES, CONTINUED.

The Wife as Agent of the Husband—Extent of Her Agency—Notice of Termination of Her Agency—Effect of Separation of the Parties—Articles of Separation—Presumption of Marriage and Agency—Support of Wife as Pauper—Decisions in Different States—Opinion of the Court in a Leading Massachusetts Case—What is Included under the Term Necessaries.

The Wife's Agency.

The agency arising from the *relation of husband and wife* is much broader than that in behalf of the child, because the wife's implied authority extends to purchases for the entire household. In order to act as her husband's agent in any other matters than the *purchase of necessities for herself and family*, she must become such in just the same way that any other agent receives his authority, namely: by the express or implied wish of the husband, or by his subsequent ratification of her acts.

If a husband is temporarily away from home, leaving his wife in *apparent control* of his property, a *presumption* arises that the wife is his agent to make contracts in regard thereto, but not to sell or destroy it.

The doctrine of her agency, as wife, to purchase

necessaries, is based on the supposition that the husband pays all the bills for household expenses and necessities for his wife and children. The custom is recognized by which these purchases are often made by the wife, and she, as wife, becomes a sort of special agent to make them at any time, thereby binding her husband to pay for them. This rule is subject, however, to certain qualifications.

Extent of Wife's Agency.

The necessities which she may purchase must be *suitable to her husband's financial circumstances*. An English jeweler who sold £500 worth of jewelry within six months to the wife of a man whose salary was £1,000 a year, could not collect the money when he sued the husband.

This agency itself ceases if the *husband furnishes all necessities himself*, for it is considered that he is the judge as to the kind and quality of provision that shall be made for the family. Also if he furnishes *ready money*, and forbids her to buy on credit. It has even been held in some cases that if he requests her to buy only at a *certain store*, other storekeepers cannot recover from him for purchases which she has made from them. But such a decision would not be given against a merchant with whom the wife, as her husband's agent, had *formerly* traded, unless it could be proved that the merchant had received some notice of the fact that she was forbidden to trade there any longer.

Notice of Termination of Wife's Agency.

In order to relieve himself from liability to parties with whom his wife has formerly had dealings, sanc-

tioned by him, a husband *must give them notice* not to trust his wife further on his behalf. But to *strangers* with whom no previous dealings have been had, no notice need be given, it being the *duty of such dealer to ascertain* the wife's actual authority (or else her destitute condition without having forfeited her right to a maintenance from her husband), before he accepts her pledge of her husband's credit. Notice in a newspaper has been held *insufficient* to affect any dealer with whom the wife has formerly traded, if he fails to see it, and has received no personal notice.

Effect of Separation of the Parties.

If a *separation without a divorce* has taken place between husband and wife, he is *still bound to provide necessaries* for her, if he has been the one to leave her, or to compel her to leave him, she being innocent of any wrong which would give him cause for divorce. He is also bound to maintain her, if she leaves without his consent, when he has been guilty of any wrong which would give her cause for a divorce; adultery, extreme cruelty and desertion are the more common and general grounds. [See Divorce, Chapters 33-36]. In these cases, she *carries her agency with her*, and may still bind her husband by purchases of necessaries for herself and their children in her care.

But if she leaves him *wilfully* and without good cause, he is *not bound* to support her during such separation, and her agency ceases entirely.

A separation may take place by *mutual consent*, in which case the husband must provide for her, and her agency continues, but with the same restrictions as in other cases, so that if he makes special provision for her support, by giving her an adequate allowance

in money, or credit at some particular stores, or by making an arrangement that she shall live with her father who is to support her (the husband paying the father therefor), or in any other way, *she cannot disregard such provision*, and bind her husband by bills contracted elsewhere.

This making a husband liable for his wife's support while they are living separately, applies particularly to cases where the wife has no means of her own. A leading authority on the subject says: "The general rule seems to be that if the wife has *adequate means of her own* for her support, *she cannot charge him* with her support while living separately from him."

Articles of Separation.

As will be shown later, [See Immoral Contracts, Chapter 10], no contract is binding which is made *contrary to the rules of law or public policy*. It is of the greatest importance to the public welfare that the marriage relation be preserved as inviolate as possible, and all agreements between married people, even when made through the intervention of a third party, that they will separate at some *future* time and live apart, and that the husband shall pay to the wife a certain allowance for her support, are *invalid and void*, being against the principle of public policy already stated; and in case the separation actually takes place at such future time, the husband is not bound by his agreement to pay over the money, though he would still be bound to pay for her *necessaries*.

Such an agreement is not void, but good and binding, if made *after* a separation has actually taken place; or at the time, and with an *immediate view to a*

separation. In such case, the husband is bound by his agreement, and must pay over the money according thereto; he must generally do so, even if, after the separation, the wife commits adultery, or brings a divorce suit against him, unless the terms of the agreement provide that in such case, he should be relieved from further payment.

If the separated parties *come together again*, the agreement thereby ends, and the husband need not continue to make payments to the wife, either during the resumed cohabitation, or should any subsequent separation take place.

The wife is bound also by such "articles of separation," and must abide by the provision to which she therein agrees, even though it prove *insufficient for her support*. So it has been held in a few cases, at all events, though perhaps the rule would not be general, especially in this country.

As to the caution which *tradespeople* must exercise in accepting the pledge of her husband's credit, given by a wife who is living apart from him, a well-known authority lays down the rule to be that *while a married couple live together, the presumption is that the wife has the authority of her husband to act as his agent in the purchase of necessities; but if they live apart, the presumption is that she has not such authority.*

Presumption of Marriage and Agency.

This presumed agency exists not only when the parties are actually married, but also in all cases where a man and woman live together as husband and wife, under such circumstances that the public is *justified in supposing* the relation to exist. The party who gives the man credit for the woman's purchases,

in particular, must have reason to suppose them married, in order to hold the man liable therefor. If he has private knowledge of any kind at the time of the transaction that they are not married, he cannot afterward maintain an action. The agency thus implied from the supposed relation of husband and wife, when the parties are in reality not married, ceases upon the death of the man, and no subsequent contract made by the woman can be enforced by her creditors out of his estate.

Support of Wife as Pauper.

Different rulings have been given in various states concerning the *support given by a town* to a wife, whose husband refuses to maintain her. In New York and Indiana, for instance, it has been held that if the husband is of sufficient ability to support his wife, she cannot be supported by the public as a pauper at all. If in need, she must bring an action against her husband, to compel him to support her.

In Massachusetts, it has been held that a town may supply a wife who is in need of relief through the neglect of her husband, and then sue him for such necessities as are suitable for the condition of a *pauper*, but for *no more*. The case of *Monson versus Williams*, in which this doctrine was held, was one of special hardship. It was a suit maintained by the inhabitants of the town of Monson against Josiah Williams, to recover for supplies furnished to his wife as a pauper. The man was possessed of large property and good credit in Monson, but refused to furnish his wife with any means of support whatever, and she, being in immediate need of relief and applying to the town for help, was supported by the town

in a better way and at greater expense than would have been the case had she gone to the poorhouse. The town then brought an action against Williams to recover the sum of money thus expended, and the lower court decided in favor of the plaintiffs, holding the husband liable; but this judgment was overruled by the supreme court, which held as follows:

"An action may be maintained by the town against the husband for the support of his wife as a pauper. But she does not carry to the town the credit of her husband. A town cannot, as a trader might, supply her with necessaries suitable to her condition in life. The only power of the town is under the pauper laws. If she is in need of relief, the town may supply it, but as to a pauper. The overseers who have her in charge are of course to exercise a sound discretion in determining whether or not she shall be sent to the poorhouse, and as to what is necessary for her relief as a poor person. But in the exercise of this discretion, they cannot take into consideration her circumstances as the wife of the defendant; nor can this consideration influence them in determining the amount to be expended. That would be to apply to this mode of support the rule adopted in the supply of necessaries; and in cases like this, where the husband is a person of large fortune, the rule would allow the overseers of the poor to support her in a style not only of comfort, but to some degree of luxury. (*New Bedford v. Chace*, 5 Gray, 28.) If the husband has unjustly expelled his wife from his house and refused to support her, her friends may supply her wants and recover the amount expended of the husband. The legal tribunals of the country are also

open to her for redress. But in this form of relief she can recover support only as a pauper."

The redress referred to as open to her by appeal to the courts, is application for a separate support, or for a divorce with alimony.

What the Term "Necessaries" Includes.

As to the meaning of the term "necessaries," as applied to the support of a wife, an eminent judge once remarked: "It is said in the books that necessaries consist only of food, drink, clothing, washing, physic, instruction and a suitable place of residence." "Instruction" does not include religious instruction. A church pew has been held not to be a necessary.

As to medical treatment, it is not quite decided how far a wife is justified in insisting on a certain class of treatment, if that which is reasonably reliable is furnished by the husband. Thus if the husband sends an allopathic physician to attend his wife, but she will not see him and calls in a homeopathist, it is doubtful whether the latter could recover from the husband for his services. If no medical treatment is provided by the husband, however, the wife who is in need thereof may choose what method of treatment she will employ, and bind her husband thereby. But it has been held in one state that if a wife calls in a clairvoyant, the husband need not pay for this class of treatment, it being a luxury, not a necessary.

CHAPTER VIII.

COMPETENCY OF PARTIES, CONTINUED.

Agency Continued—How Agent's Contract Should be Made to Bind the Principal—In Regard to Sealed Instruments and Negotiable Paper—Principal May be Liable for Agent's Fraud—For His Torts—For His Crimes—Termination of an Agency.

How Agent's Contracts Should be Made.

Care should be observed by every one who acts as agent, so to conduct matters as to *bind only his principal* by the contract, and *not himself*. By carelessness, agents have often laid themselves liable, sometimes to their financial ruin. An agent should do all business in the name of his principal, and *never in his own name*; or in cases where it may be necessary to use his own name, he should sign *for the principal*.

It is *especially essential* in deeds, mortgages and all other *sealed* instruments, when one acts as agent for the grantor, that the principal's name, and not the agent's, shall appear in each part of the deed.

Thus if John Brown owns land, and gives a power of attorney to Sarah Brown to act for him in its conveyance, the deed should be drawn to the effect that "I, John Brown, do hereby convey," etc. The deed may be signed "John Brown" merely, or "John

Brown, by Sarah Brown, agent," and Sarah Brown may acknowledge the deed, but she acknowledges it as being "the free act and deed of John Brown."

In regard to promissory notes and other contracts not under seal, the rule is not so strict as in deeds, it being enough if the principal's name appears somewhere in the paper, showing that the intent of the parties was to bind the principal, and not the agent. Still it is always much better to use the principal's name throughout, thus:

"I, John Brown, for a valuable consideration, do hereby promise to pay, etc.

Signed—

John Brown,

By Sarah Brown, Ag't."

If, instead of following this form, it be written, "I, Sarah Brown, *as agent* for John Brown, do hereby promise to pay," and the signature be "Sarah Brown" merely, John Brown would be bound by the note, but it is better not to use the agent's name at all in the body of the contract, for by some simple misuse of words, the agent may find she has bound herself. Thus it has been held that where a note was written, "I, Sarah Brown, *on behalf of* John Brown, do promise" etc., the agent, and not the principal, was bound.

Another thing which is essential to the validity of an agent's acts has already been mentioned. He must be careful to act *strictly within the scope of his authority* in every case.

Principal's Liability for Agent's Fraud.

The principal and his agent are by law considered so entirely one person, that the former may not only be liable for the latter's contracts, but also, in some

cases, for *wrongful acts* which he may do *while in performance of his duty as agent*

For instance, if he is guilty of any kind of fraudulent dealings, the principal is responsible for the fraud in all cases where he *knew* that it was to be perpetrated by the agent, and did not interfere to prevent it; and even if he was ignorant of it at the time, but consented to it afterward and received the profits arising from it. This, like any other ratification of an agent's act, makes the principal liable.

So if the principal causes the agent to *make false statements* concerning his business, the principal knowing their falsity but the agent ignorant thereof, the principal is liable for the fraud.

Principal's Liability for Agent's Torts.

A principal is responsible *for all torts* committed by his agent while engaged in the former's business, when such acts are done *with the intention of forwarding the business*.

It is often a nice point to decide whether or not the acts are committed while engaged in the principal's business. But the subject will not be pursued further here, as it is treated at some length in another part of the book. [See Negligence, Chapter 40.]

Principal's Liability for Agent's Crimes.

A principal may even be responsible for his agent's *crimes*, if the act be done *by his consent*, expressed or implied; or if it be done while the servant is engaged in carrying out his employer's orders, the latter not having expressly forbidden the act. Thus, an apothecary is responsible for the act of his clerk who sells poisons or liquor without compliance with the statu-

tory regulations on the subject, unless he has positively ordered the clerk to comply with them.

Termination of an Agency.

An agency is ended by the *death or insanity of either party*; by the *dismissal of the agent*; or by *his own termination*, express or implied, of the agency. In some cases, as has been already said, it is necessary to *give notice to the world* that the agency is terminated, in order that the principal may be entirely free from liability for any future acts of the agent in his name; and it is *always* far safer to do this, through the newspapers or otherwise.

The death of either party, terminates the agency *absolutely and instantly*, and no notice of such a termination need be given, for it is held in law that a death is a matter of common knowledge to the world. So if one deals with an agent, and it afterward proves his principal had died the day before the contract was made, the estate of the deceased is not liable therefor.

CHAPTER IX.

COMPETENCY OF PARTIES, CONCLUDED.

Partners—Partnership Defined—Division of Profits and Losses—Test as to Partnership—Test as to Third Persons—Limited Partnership—Agreement Should Be Clear and Distinct—Secret or Dormant Partners—Minors and Married Women—How a Partnership May be Formed—Rights of a Partner—Dissolution of a Partnership—Effects of Dissolution by Death—Application of Property to Debts, both of the Firm and of the Individual Members—Corporations.

The principle of agency underlies the entire law concerning partnership; for *each partner is an agent for the entire firm*, and may bind the firm by all his acts relating to the partnership business.

Definition of Partnership.

Partnership may be defined as *the relation between parties who combine their money, labor or skill, or all of these, in some enterprise or business, the profits and losses of which are to be divided between them.*

Division of Profits and Losses.

There may be an express agreement as to the manner of division of the profits or losses; or if there be no such agreement, the circumstances of the case will

decide the question. The division will not always be an equal one, even when no express agreement is made. One partner may put in all the money and another all the skill and experience; there need be no equality in this matter either. One may furnish both skill and money, and may take as a partner one who has neither; then if they choose to agree that the division of profits and losses shall be equally shared between them, they may do so; but if there be no agreement, it is not probable that a court would give an equal share of the profits to the partner who brought nothing into the firm. In the absence of any such evidence going to show a probable intention that the division of profits should be unequal, and in absence also of any agreement, the presumption is that the partnership losses are to be equally borne, and the partnership profits equally divided.

Neither is there any necessity that the capital or property of the firm should be jointly owned by the partners, for though very usual, it is quite possible for one partner to own it all, and to continue to do so.

Test as to Partnership.

The real test as to a partnership is, *whether or not the mutual intent of the parties was that each should have a joint interest in the profits and losses of the concern*. If such was the intent, they are partners; otherwise not. The interest need not be equal, but each must have a right to claim some part of the profits, and must be responsible for some part of the losses. A joint ownership in the capital or property of a business enterprise is not in itself sufficient to make the owners partners. The joint interest in profits and losses is also necessary.

While as to third persons, one who is known to participate in the profits, may be held as a partner whether or not he participates also in the losses—the better opinion is that between the *immediate parties* to an arrangement by which one is to participate in the profits only, he cannot be held as a partner. An arrangement may be made by which one shall put money into a business, and shall be entitled therefor to draw a *certain proportion of the profits* of the business, or a *sum equal* to a certain proportion of the profits; but such an agreement will not create a partnership, so as to enable the *other partners* to hold him bound to pay any part of the losses, neither has he the rights of a partner authorizing him to compel them to account for the profits, or to demand to see the books of the concern.

Test as to Third Persons.

As has already been intimated, such an agreement may result in making this outside individual liable to creditors of the firm as a partner therein. For while as to the *parties themselves*, the test of partnership is their *intent to share* in profits and losses, as to *the world*, which knows nothing of their private agreements, the test is whether they have *given it to be understood* that they were partners.

So if third persons knew that the party above mentioned had money invested in the concern, and drew part of the profits; if they had good reason to suppose him to be a partner, and knew him to be worth property, and thereupon gave credit to the firm, he is responsible to them if he allowed such credit to be given, knowing their mistake, and giving them no warning. Public policy requires this

rule for the security of business dealings, and the prevention of fraud.

So where one has *formerly been* a partner, and severs his connection with the firm, if parties are still allowed to suppose that he is a partner, he will be liable for the debts of the concern.

One therefore, who is not willing to assume the liabilities of a business enterprise, should be very careful *not to allow his name to appear* to the public in any way as a member of the firm, either on the sign or the shop bills, or by careless talk which could be so understood.

Limited Partnership.

One or more members of a firm may be limited partners only, and they are *not liable* for the debts of the firm to the full extent of their private property, as general partners are, but only to the extent of the property which each has put into the business.

All partnerships will be held to be general, and the partners fully liable for the firm debts, *unless the laws concerning the formation of limited partnerships are very closely followed*, and the partnership papers very carefully drawn. Many men and women have been financially ruined by supposing that they were limited partners in some great business enterprise; but after receiving their large dividends for a few months or years, the enterprise fails, and the creditors attach the private property of those who supposed themselves only limited partners, and who, after fighting the case through the courts, find at last that it is too late to remedy the error of a faulty document, or of too great confidence in the good intentions of others.

The statutes in most states on the subject require

that the terms of a limited partnership shall be *published in newspapers* in a certain specified manner; and such a statement must *conform precisely* to the requirements of the statute, in order to relieve a limited partner from the danger of being generally responsible. The particulars of these various statutes will not be given here, for they would uselessly cumber the pages, it being very unsafe for people unlearned in the law to attempt to draw up articles of copartnership themselves.

Agreement Clear and Distinct.

When a partnership is decided upon, articles should be drawn up and *every particular of the agreement should be clearly set forth*, so that no question or doubt may arise either between the partners or with third persons. The duties of each partner, the business to be done, the proportion of profits and losses coming to each, the time during which the relation is to continue, the amount invested, and how dissolution may be effected, are some of the essentials of such a document.

Secret or Dormant Partners.

One may be a secret or dormant partner, and if creditors do not discover the connection of such a partner with the firm, he is not bound to contribute to the losses, though he may have received a great proportion of the profits. If he is discovered, however, he can immediately be held responsible for the partnership debts; and the practical cases are comparatively very few in which dormant partners are not known to be such, sooner or later.

Minors and Married Women.

Minors may be partners, but they are not bound by their contracts in this relation any more than by others, for it will be remembered that they can only be held to their contracts for necessities. [See Infants, Chapter 5.]

A *married woman* may be a partner in many states now, by statute, though not at common law; but the disability still remains in some states to the extent that she cannot bind herself by partnership relation with her husband, or with any firm of which the husband is a member. Such is the law in Massachusetts.

How a Partnership May be Formed.

A partnership may be formed by *any agreement, oral or written, by acts which imply such relation, or even by subsequent ratification of acts* which were originally done without the knowledge of the party who afterward makes himself responsible therefor. Thus a man who has really no connection with a business partnership formed by his sons, may make himself liable as their partner for debts which they contract, with some party to whom he has said, when asked about their credit, "It is all right; I am interested in the concern; have made money out of it, and will stand the losses, if any occur."

Rights of a Partner.

Each partner may bind the firm by all acts, *not under seal*, which naturally come *within the scope of the partnership business*, but by *no others*. Deeds, mortgages and all contracts concerning real estate, must be signed by each partner individually and never in the general firm name. Conveyances of real estate

made to a firm must also be given to the partners by their individual names. Other contracts, not under seal, may be made by one partner alone, but he should sign the firm name. Promissory notes, to bind a partnership, should read, "The firm Smith & Jones promises to pay," etc.

Any partner may collect debts due the firm and give a perfectly good receipt therefor; and if he runs off with the money, the other partners have no remedy except against the absconding partner—if they can catch him.

Not only so, but a partner may also *compound* a partnership debt—that is, he may accept a portion of it before the whole is due, giving a receipt in full for the entire amount, and the firm will be bound by such an arrangement, however disastrous it may be.

Even if the firm gives previous notice to the creditors not to pay the partnership debt to the partner whose honesty they suspect, the creditors are not bound to heed the notice, but may still continue to pay to the suspected partner and to take good receipts from him, for *so long as he is a partner*, he has a partner's rights and privileges. The only way to avoid such danger is to dissolve the partnership.

While the partnership relation continues, each partner has a right to *an equal voice* in the management of all its affairs, even though the pecuniary rights of the partners be very unequal. He has always an unqualified *right of access to the books* of the concern, and unless the articles stipulate otherwise (which they always should) he may *take partnership goods* for his own use, and *draw from the profits* at his own will. Each partner has a right to demand that the others shall give *due care, time and attention* to the partner-

ship business, and no partner can enter into *any other private business* which will compete or interfere with the best interests of the partnership business, without the consent of the others.

One partner cannot sue the others on any matter arising out of the joint business, in Courts of Law; he must appeal to a Court of Equity, which has entire jurisdiction over all partnership matters.

Dissolution of a Partnership.

A partnership may be dissolved at any time *by notice* from one partner to another, if the partnership be merely one at will—that is, for the continuance of which no definite time has been fixed. But the partnership articles usually specify some certain period during which the relation shall continue, and the manner in which notice of dissolution may be given; and where this is the case, these terms must be observed. Even in such a case however, a partnership may always be immediately dissolved *by mutual consent* of the partners, as also by *expiration of the specified time*.

The death of any partner, even a special one, always dissolves the entire firm instantly, unless the partnership articles stipulate that the business shall continue for some specified time after such death, in order advantageously to wind up the affairs of the concern.

Bankruptcy immediately dissolves a partnership. If one partner *sells out* his interest, it also works a dissolution of the connection.

There are a number of causes which give ground for an application by one or more of the partners for a *judicial decree of dissolution*.

Among the most common, are the *misconduct* or

absconding of any partner; his *entire inability to perform his duties*, by reason of insanity or other cause; or the *impracticability of carrying on the business* for which the partnership was formed. If the applicants show sufficient cause, a decree will be given which at once dissolves the partnership, although the time stipulated in the articles may not have expired.

After dissolution of a partnership, it remains only to *collect the assets* of the firm, to *pay its debts*, and to *divide the profits*; and each partner still has the power to do all business requisite to the accomplishment of these objects, and to bind the other partners thereby, but this is all he can do; he can neither make new contracts, nor bind the firm by debts of any kind.

Effect of Dissolution by Death.

Upon the death of a partner, the survivors have a *lien* upon the partnership property, and the *entire right of control* over it, for the sole purpose, however, of winding up the partnership affairs, and this accomplished, they must settle with the personal representatives of the deceased.

Question is often raised as to the ownership of real property—lands or buildings—claim being made to it by the firm, and also by the personal representatives of a deceased partner. The test is as follows: If such property was purchased *with partnership funds for partnership purposes*, no matter in whose name the title may have been taken, it belongs to the firm, and will be liable for partnership debts before the right of dower can attach in favor of the deceased partner's widow, or any claim of heirs be satisfied. After the partnership debts have been paid, the widow's right of dower attaches to such surplus

of real estate as may remain, in some states; but in others, no dower can be claimed from any part of the partnership realty in any case.

Application of Private Property to Debts.

In settling with the creditors of a firm, *the private property* of any general partner may be *first applied* to that purpose, if the creditors prefer to take that rather than the partnership property, even though there may be enough of the latter to cover all the debts of the firm. It is optional with the creditors.

But if the partner has also *private creditors*, they have the first claim on his *private property*, and in such case, the partnership creditors must resort to the partnership property. There are many close questions relating to this matter of the application of private and partnership property to the settling of private and of partnership debts, on a dissolution of the firm by death or bankruptcy, and the different states have conflicting rules regulating it; but it is not necessary to enter into their complications here.

Corporations.

In this connection, brief reference may be made to corporations, which in their nature, rights and powers, have some general resemblance to partnerships, though the two relations differ from each other in several very important particulars.

Definition.

A corporation is an artificial body or person, usually consisting of two or more individuals, whose contractual powers are given by the legislature. These powers are *strictly limited* by the terms of the legislative charter which creates it.

Cities and towns are corporations; so are many manufacturing companies, charitable societies and business concerns. Indeed, the greatest possible variety of associations may be incorporated.

The united action of the membership of a corporation is necessary to give validity to its acts, and this may be manifested by a vote, or by the act of one or more of its officers or members who have been formally appointed its agents to do certain acts, and to bind the corporation thereby.

Every corporation has the power of *perpetual succession*; that is, when one or more members die or withdraw, others may take their places, and thus the life of the corporation continues, though all its members may have changed.

A corporation may sue and be sued; may grant and receive grants of land and other property; and may do all other business which an individual can do, *to the extent which its charter allows*. Beyond the bounds of its charter privileges, however, a corporation is powerless and can do nothing, except that it may do such other business as is naturally and commonly *attendant upon* the express business for which the corporation was created.

A corporation may be dissolved by the expiration of its term of existence; by the loss of all its members; by surrender of its charter; or by forfeiture of its charter, for neglect of its duties or abuse of its privileges.

CHAPTER X.

IMPOSSIBLE AND ILLEGAL CONTRACTS.

Impossible Contracts—What Constitutes Legal Impossibility—Immoral Contracts—Unlawful Contracts—Contracts in Restraint of Trade—Contracts Restraining or Promoting Marriage—Contract to Purchase a Public Office—To Give Extra Pay for Performance of a Legal Duty—Contract to Compound a Crime—Contracts Unlawful by Statute—Usurious Contracts—Sunday Contracts—Sunday Travel.

As there are certain classes of persons who cannot make general contracts, so there are *certain classes of contracts which cannot be made by anybody.*

Impossible Contracts.

Some contracts are not binding because, in the nature of things, they are impossible.

The above proposition must not be too broadly understood, however, because there are many things that would ordinarily be considered impossible, which are legally quite possible. Also, the impossibility which in many other cases really exists, should be realized and considered beforehand; and having made such contracts, people must abide by the consequences of their own rashness.

No degree of danger or difficulty will make a contract legally impossible. If a man promises to deliver at a certain time a certain amount of wheat, and a great blight falls upon the land, so that at the time named, there is not so much wheat in the world, he is not relieved from his contract, and must pay damages for breaking it.

It is under this rule of law that it has been held that a suit to recover damages for breach of a promise to marry may be maintained against a man, although he was married already when he gave the promise, and so cannot fulfil it. This would not be so, however, if the woman to whom the promise is given, knew at the time that he was married.

To avoid the possibility of being held to a contract under very adverse circumstances, *conditions* are usually inserted in contracts; as for instance, if a man contract to have a building in perfect repair at a certain date, the condition may well be added, that if the building be destroyed by fire before that time, he shall be relieved from his contract. Conditions are carefully framed and inserted in many contracts by cautious people to guard themselves against loss. In many difficult cases, the courts have held that *conditions were implied* from the circumstances of the case, and thus the parties have been relieved.

There is no very definite rule concerning impossible contracts, each case being usually decided on its own peculiar merits.

Immoral Contracts.

No immoral contract is binding, or will be enforced by any court of law or equity. Duties of a merely moral nature, to which parties have not legally bound

themselves, will not, as has been already seen, be recognized by law, but neither will the law recognize contracts, however binding and otherwise legal, the object or the consideration of which is immoral in its nature.

So if a hall be hired with the purpose of giving therein a lecture which is contrary to good morals, the lessors may refuse at the last moment to carry out their contract, and may close the hall, and the lessees cannot recover any damages for such failure. The same is true of any contract to let a house which is to be used for immoral purposes.

Unlawful Contracts.

No contract will be enforced which is contrary to the law of the state where it is framed. There is a long list of contracts which are considered unlawful, of which only a few need be named here.

Contracts in Restraint of Trade.

Contracts in *entire* restraint of trade are so unlawful that they are not binding *even if under seal*. The meaning of the expression "in entire restraint of trade" may be illustrated as follows:

If A is in the dry goods business in Chicago, and sells out to B, agreeing *never again* to go into the same business himself, or agreeing not to go into the business again *anywhere in Illinois*, this agreement is not legally binding.

A *reasonable* contract of restraint is binding, however; for instance, that he will not start the same business again within a year, or that he will never carry it on within a mile of the old stand; or perhaps never in Chicago.

Contracts Concerning Marriage.

Contracts unreasonably restricting marriage are unlawful. Thus if a mother who has had an unhappy married life, thinks to protect her daughter from a like experience by making a contract with her, by which the daughter promises not to marry before she is forty years old, and the mother promises to pay her a sum of money on her fortieth birthday if she be then unmarried, neither party is bound by such promise, and even if the daughter fulfils hers, she cannot compel payment of the money. But a contract not to marry before she is twenty-one would be reasonable and valid.

A contract by a married man to *get a divorce* and marry another woman is void, and the latter cannot hold him to it; neither is a promise to marry her *as soon as his wife dies*, binding; because in both cases there would be a temptation to commit an unlawful act by which to rid himself of his wife, and the court will not uphold any contract which contemplates anything so contrary to public policy. But on the other hand, as an illustration of a contract impossible of fulfillment, by which a party imprudent enough to make it may yet be bound—if a married man promises to marry a woman who *supposes him to be single*, she may recover damages from him in a breach of promise action, quite as much as though he were really unmarried. He cannot marry her, but he must pay for making a false promise to do so.

A contract to *bring about the marriage* of any person is also invalid in this country, though in some of the continental countries of Europe, such contracts are common and binding. We sometimes read in the

newspapers of matrimonial agencies established in San Francisco, New York and other places, but if any such establishments really exist, they must do a strictly cash business, as they can enforce no contracts of the kind in any of our courts.

There was once a case tried in New York where two ladies had contracted under seal, that one should do all she could to bring about the marriage of the other with a wealthy widower, and if the marriage should take place, the lady who would thus become his wife agreed to pay money to the other, and to give a gold watch, piano and education to the other's daughter. The marriage took place, the payments were not made, suit was brought, but the contract was pronounced void.

Contract to Purchase Public Office, etc.

Any contract for the *purchase or sale of a public office*; or for the *influence* of any one connected with government to aid in obtaining a position or office, is void. So is any contract to pay *more than the regular fees* for the performance of any legal duty; as for instance, the promise of the captain of a ship to pay the sailors a certain sum of money beyond their regular wages if they will do extra work during a severe storm and bring the ship safely into port. It is the sailors' duty to bring the ship into port, in any case, if possible to do so, and the promise to give them extra pay for the performance of such duty is void, and cannot be enforced.

Compounding Crimes.

A contract *not to prosecute* any criminal offender is unlawful, and if such offender promises to pay a sum

of money to the party who thus assists him to escape punishment, the promise is void.

Contracts Unlawful by Statute.

There are several other classes of unlawful contracts which need not be specially referred to here, that are void in all parts of the country ; and besides these, each state has various statutes of its own, making certain other classes of contracts void for illegality. The sales of many staple articles of food and of daily use are thus regulated ; the sale of a loaf of bread under a specified weight ; of oleomargarine not properly designated as such ; of milk in measures which have not been officially tested ; etc., are unlawful, and contracts to pay for them are void. The sale of intoxicating liquors is regulated by law in many states, and any contract to pay for liquor sold contrary to the requirements of such law is illegal and void. [See Abstracts, Title, Miscellaneous.]

Usurious Contracts.

In many states there are *usury laws*, fixing a certain rate of interest on money as lawful, and making void any contracts to pay a greater sum. [See Abstracts, Title "Interest."]

So in most, or perhaps all states, *gambling* is prohibited by law, and all gambling debts and all contracts the object of which is gambling, are void.

Wagers or bets are utterly void in many states and cannot be enforced.

Sunday Contracts.

We have heard a good deal in the last few years regarding the Sunday laws in various states.

Until about two centuries ago, there were few laws in England restricting contracts or other business on the Sabbath, and the rules on the subject are purely statutory, differing greatly in the various states. Not only so, but in many states where strict regulations concerning the observance of Sunday are on the statute books, they are practically obsolete, being seldom enforced. Occasionally there is a spasmodic awakening to their existence, and a number of arrests are made of parties who are violating them by keeping open places of business, etc., but usually very little comes of it. It is of utmost importance, however, for those who have business dealings to remember that *all contracts made on the Sabbath are void*, being not only unsusceptible of enforcement, but utterly *incapable of subsequent ratification* even by mutual consent of the parties; and though a *new contract* made on Monday to the same effect is valid, it may chance that Monday will be too late to accomplish the desired result. It will avail nothing to date the Sunday contract falsely, for it is the *actual day* of making and signing it, and not the day named in the contract, that determines the question of its validity.

The rule is different as to a promissory note, *delivery* being essential to its binding force; so if a note be drawn and signed on Sunday, and delivered on Monday, it is good. But if made on Saturday and delivered on Sunday, it is void.

A promise of marriage made on Sunday is no more binding than any other Sunday contract—a point worth remembering in certain localities where Sunday is the favorite day for agreements of this kind. So if a letter be written and sent on Sunday, accepting an offer of marriage received on Saturday, no

contract is thereby formed which is binding, or will support an action for breach of promise. Questions have also been raised as to Sunday marriages, but the weight of opinion is that they are valid.

Sunday Travel.

It is unlawful in most, or perhaps all states, to travel on the Lord's day, unless it be on an *errand of "necessity or charity,"* and if one is traveling for other purposes, and is injured, no damages can be recovered. So if one is walking or driving on Sunday to call on a friend or to enjoy the scenery, and an accident occurs owing to the defective condition of the street or road, no action can be maintained for damages. It is often a difficult matter to decide whether an errand comes under the term "necessity or charity," and the question is always one for the jury to settle.

An exception is made in Massachusetts, and probably many other states, by which *common carriers* (that is, all railroad, horse-railroad, steamboat, omnibus companies, and others who make a business of carrying passengers) are *not released* from their liability to pay damages for injuries resulting from their negligence at any time, Sunday included. It is only by special license that common carriers are permitted to take passengers or to run their vehicles at all on the Lord's day, and they are held to the same degree of care and responsibility then as on other days. [See further as to Common Carriers, Chapter 16.]

There are many other statutes in various states, making other classes of contracts unlawful, but they are not sufficiently broad or general in their importance to require notice here.

CHAPTER XI.

COMMERCIAL PAPER.

Definition of a Promissory Note—Terms Used to Designate the Parties, etc.—Discounting a Note—Indorsement—Transfer by Delivery—Definition of a Bill of Exchange—Acceptance—Foreign and Inland Bills—Definition of a Check—Essentials of Negotiable Paper—Three Peculiar Characteristics of Commercial Paper—The Presumption of a Consideration—Who is a Bona Fide Holder for Value—Negotiability—Days of Grace.

The subject of commercial paper is a somewhat difficult one in its technicalities, but it will be treated here as briefly and simply as possible, without entering into the finer and more troublesome points.

Commercial paper is the representative of money, as money is that of property itself, which in earliest civilization was interchanged by barter before money came into common use. A great proportion of all the business in the world is now facilitated by the use of commercial paper.

Commercial paper consists of promissory notes and bills of exchange. Checks drawn on banks are sometimes called commercial paper, and they will be considered here in connection with notes and bills, as their nature is very similar.

Definition of a Promissory Note.

A promissory note is a written promise by one person to pay to another, or to his order, or to bearer, a certain sum of money, absolutely, without condition, and at a time certain to arrive. [See Appendix, for blank form of promissory note.]

The party who makes the promise is called the *maker* of the note. The person to whom the promise is given, is the *payee*. When the note is given into the possession of the payee, this *delivery* makes it a binding promise; but while the maker keeps it in his own possession without delivery, it is not a contract at all. The delivery is essential to its life as a note.

Discounting a Note.

If the note is made payable "to the payee or order," the payee may at any time *sell the note* to a third party, receiving therefor the sum which was originally promised—"the face of the note," as it is called—or a less sum, as he may be able to arrange with the party who buys it. When a note is given by a *reliable party*, whose name is well and favorably known in business circles, it is easy to raise money on it, even when no one can be found who will buy it outright, by taking it to a bank or note broker, and getting it "discounted;" that is, receiving the "market value" of the note, which is the face value minus a percentage, the amount of which depends on the state of the money market, and a small percentage to the broker for his services.

Indorsement.

In any case, to sell such a note, the payee, to whose order it is payable, must *indorse* it; that is, he must

write his name across the back of the note, with or without special words of direction to pay to the party to whom he sells it. Simply writing his name is *a sufficient indorsement* to pass it. [See Appendix, for form of indorsement on note.] Having thus indorsed the note, he who was the payee thereby becomes an *indorser*; and every successive person into whose hands the note may come is an *indorsee*, until he indorses it (for a note or bill may pass from hand to hand indefinitely), by which act he also becomes an indorser. The person who has the note at any given time is also called the *holder*.

Transfer by Delivery.

If the payee only writes his name and does not fill out a formal indorsement, directing to whom it shall be paid, he is said to indorse it "*in blank*," and the effect is then the same as it would have been had the note originally been made payable to payee "*or bearer*," instead of "*or order*." In either of these cases, if the payee simply writes his name across the back, the note may then pass from one person to another *merely by transfer*; that is, no further indorsements, even by name, need be made on it.

When the time expires for which a note is given, it must be presented to the maker for payment.

Definition of a Bill of Exchange.

A bill of exchange is a written request by one person to another, to pay to a third person, or to his order, or to bearer, a certain sum of money, absolutely, without condition and at a time certain to arrive. [See Appendix, for blank form of bill.]

He who makes the request is called the *drawer*

of the bill. He to whom the request is addressed, is the *drawee*. The third party, to whom the drawee is requested to pay the sum, is the *payee*. When the drawee "accepts" the bill, he becomes the *acceptor*.

A bill is always supposed to be drawn by one who has been having business dealings with the drawee, and the latter is supposed to have funds of the drawer's in his possession. Thus a request is sent by A to B, asking him to pay over to C a certain sum of money belonging to A, but which is in B's possession. By this means A may pay C a debt which he owes him, very conveniently to all parties.

Acceptance.

Before the time arrives when the money is directed to be paid, the payee, into whose hands the drawer delivered the bill, must *present it to the drawee for acceptance* ; and if the latter recognizes the signature, and has funds in his possession belonging to the drawer, he will *accept* the bill ; that is, he will write "accepted" with the date and his name or initials (or some other words to the same effect) across the face of the bill, by which act he ceases to be the drawee, and becomes the acceptor of the bill. After such acceptance, by which the acceptor makes himself *personally liable* to pay the bill, as much as though it were his own note, the bill may be indorsed by the payee to some other person, after which it may be indorsed or transferred from party to party, just as a note may be, until the time for payment comes, when it must be *presented to the acceptor for payment*. If the acceptor fails to pay as agreed, *the original drawer* may then be looked to for payment by the holder, whoever this may be at the time of the maturity of the bill.

Foreign and Inland Bills.

Bills of exchange may be foreign or inland. A *foreign* bill is one of which the drawer and drawee are in different countries.

Thus C is going from this country to Europe, and he will want a large sum of money to use on his arrival there, but does not wish to carry it with him, so he pays over the money to A, who gives him therefor a bill drawn on B, who is A's business correspondent in Europe, and who has funds of A's. When C arrives in Europe he may present the bill to B, who accepts it, and C may then get it discounted; or if the time is short, he may keep it, and present it himself to the acceptor for payment, and receive the full face value and interest. The convenience of this arrangement will be readily perceived.

Inland bills, more commonly called *drafts*, are drawn between parties living in the same country, but usually in different sections of it. All the explanations as to indorsement, parties, etc., given concerning notes, apply equally to bills.

Definition of a Check.

A check is very similar to a bill of exchange, but it is always *drawn upon a bank*, and should be drawn only by one who has money deposited therein. [See Appendix, for blank form of check.]

Essentials of Negotiable Paper.

The definitions which have been given of a promissory note and a bill of exchange, should be carefully considered in their every part. In a note or bill, which may be negotiated, the promise must be *to pay in money*; a promise to pay in commodities of

any other kind, would create a good contract, but not a negotiable instrument. [Negotiability will be explained shortly.]

No condition or contingency of any kind whatever can be inserted in a bill or note; if a condition does appear, either expressly or impliedly, the negotiability of the instrument is thereby destroyed, and it becomes an ordinary contract.

Also the *time of payment* must be clearly expressed in the note or bill, and it must be either a *definite, fixed time*, as for example, "In thirty days I promise to pay," etc., or a time *sure to arrive*. Under the latter term are included "*demand*" and "*sight*" notes; "I promise to pay on demand," or "I promise to pay on sight." If one makes a note thus, "I promise to pay on my twenty-fifth birthday," it is not a good negotiable note, because it is by no means sure that the maker will live to see his twenty-fifth birthday; so it loses the character of a note, becoming merely a conditional contract.

It is apparent, therefore, that the greatest care should be taken to write a note or bill according to the rules which govern negotiable paper, taking no liberties of construction whatever.

Three Peculiarities of Commercial Paper

There are *three peculiar characteristics of all commercial paper*, in which it differs from all other contracts.

The Presumption of a Consideration.

First—the *consideration is always presumed*, and the failure to set it forth in the note or bill will not invalidate the paper. In no other contracts (except those under seal) is the consideration ever presumed, the

burden of proof being always on the plaintiff to show that there was a consideration. (Commercial paper, it may be mentioned here, *must never be sealed*, for a seal *makes it a bond*, destroying its negotiability).

Between the *immediate parties*, this presumption of a consideration is *not conclusive*. Thus in case of a note, the immediate parties are the maker of the note, and the payee, to whom the note was originally given. The maker can defend against a suit brought by the payee to compel payment of the sum named in the note, by showing in evidence that no consideration was ever given him by the payee, in whose hands the note is therefore valueless.

But if the note has been indorsed over by the payee to a *third party*, who had no knowledge or means of knowledge that there had been a lack of consideration between the maker and payee, and who himself had given a consideration for the note to the payee from whom he received it, he can compel payment from the maker, when the note is due, for as regards him, or any subsequent holder of the note into whose hands it may have come on the same terms, a consideration is *absolutely presumed* to have passed between the original parties to the note, and no evidence will be admitted to the contrary.

This rule is for the protection of business. Otherwise no one would dare take commercial paper without having actual knowledge of all the particulars of the first making and delivery thereof, and as such knowledge would generally be impossible to get, the very object of commercial paper would be defeated. Not only is the original consideration absolutely presumed, in favor of a holder under the circumstances already given, but *any other flaw* in the original con-

struction and delivery of the paper, which might be a good defence *against the payee*, if he held and sued on it, will not be admitted as a defence against a *bona fide holder for value*—unless, of course, the note was originally absolutely *void*, as, for instance, if it was forged, or stolen before delivery.

Who is a Bona Fide Holder for Value?

A holder is said to be a "*bona fide*" one, when he had at the time of taking the paper, *no knowledge* (or means of knowledge such as the law considers equivalent to actual knowledge) of the original lack of consideration or other flaw in the making and original delivery of the note or bill.

He is said to be a holder "*for value*," when he himself actually *gave a consideration* for the paper to the party from whom he received it.

Only one who is *both* a bona fide holder, and a holder for value, can claim the protection of the absolute presumption of a consideration.

Negotiability.

The second peculiarity by which notes and bills differ from other contracts is that of *negotiability*, which enables all commercial paper to *pass from hand to hand like money*, either by indorsement or by transfer without indorsement, as has been already explained. This feature of negotiability attaches only, however, to such bills or notes as contain the words "*or order*" or those "*or bearer*;" for many bills and notes are *unnegotiable*, being drawn payable *only to a certain person named* as the payee.

In the latter case, the payee himself must sue on them, or if he assign them to another party, as may al-

ways be done with any contract, such assignment gives no power to the assignee to sue in his own name; he must sue in the name of the payee, and any defence may be presented to his suit which might be opposed to one brought in fact by the payee himself. [See Assignment, Chapter 14.—In New York and perhaps some other states, a statute enables any assignee to sue in his own name.]

It is *only of negotiable paper* that one can be a *bona fide holder for value* so as to entitle him to the protection already described. It is only negotiable paper which has the character of money.

These peculiarities as to presumption of consideration, and negotiability apply to checks as well as to bills and notes. It should be remembered, however, that if one who draws a check and delivers it, *dies before it has been presented* at the bank and cashed, the check is thereby rendered valueless, for the bank is not at liberty to cash it; while a note or bill may be collected when due, out of the estate of any deceased party who is liable thereon.

Days of Grace.

The third peculiarity of bills and notes (which does not apply at all to checks), is that known as "*days of grace*." After the arrival of the time when a note or bill is payable, *three days more are allowed* before the paper is dishonored, and no step can be taken toward bringing suit on such paper, until the expiration of these three days. (In a few states, suit may be brought on the last day of grace.)

An exception to this rule is made in the case of "demand" notes and bills, which must be paid on *the very day* when they are presented for payment, no

grace being allowed. The usual days of grace attach to "sight" paper; such is the general rule, at least, though in New York, and possibly other states, no grace is given to sight paper. As has been said, *checks* must always be paid *on presentment, without grace*.

CHAPTER XII.

COMMERCIAL PAPER, CONCLUDED.

Interest—Usury Laws—Responsibility of Indorsers—Presentment for Payment—Accommodation Paper—Defences against Suit on Commercial Paper—No Consideration—Holder Affected with Notice of Equities—Stolen Note—Note Stolen before Delivery—Forged Note—Notes or Bills Void by Statute—Material Alteration of a Note or Bill—Overdue Paper.

Interest.

Any rate of interest may be named in a bill or note, except in states where *usury laws* prevail. In some states, New York among them, the statute against usury makes any bill or note which names a rate above the legal one *absolutely void*. In others, the note or bill is good in the hands of a *bona fide holder for value*, though not in those of the payee; while the majority of usury laws merely impose a *penalty*, as for instance, the forfeiture of the surplus interest above the legal rate, or the entire interest. [For usury laws in the different states, see Abstracts, Title "Interest."]

If no reference to interest is made in the note or bill, none can be claimed *until the paper is due* (unless given by statute), after which, until payment, interest at the legal rate can be collected. In case of a note

on demand, although it is held to be due immediately when made, interest does not begin to run on it *until demand for payment* is made.

Responsibility of Indorsers.

By *indorsing* a note or bill without qualification, and delivering it to another party, the indorser always makes himself *secondarily responsible for the payment*.

That is, his indorsement is in effect a contract, whereby he says, "*If the maker of this note does not pay it at maturity, and if I am properly informed of his failure to do so, I promise, on consideration of the sum which I now receive for it, to pay it myself.*" Sometimes there are a number of indorsements, each indorser thus promising to pay if the maker does not, and each or all may be sued on such promises.

One who merely transfers a note, which has been indorsed in blank by the payee, does not make himself responsible; it is only by writing his name on the note—with or without a formal indorsement—that one becomes liable, as indorser, for its payment.

It is, however, possible even for an indorser to save himself from responsibility by indorsing "*without recourse;*" that is, by writing his name, with the words, "without recourse to me." If the indorsee is willing to take the paper on such terms, considering the former parties sufficiently reliable, he can do so, and the indorser is relieved entirely in the matter. Sometimes also a *qualified indorsement* of some other kind is given, limiting, restricting, qualifying, or enlarging the responsibility of the indorser in some way.

This responsibility of indorsers is one of the *principal features* of the laws concerning negotiable paper, and many exceedingly fine and troublesome points

have arisen thereon. It is only necessary to say here, however, that *every unqualified indorser* of a bill, note or check, *binds himself*, by his indorsement, *to pay it* at maturity to any innocent holder for value; provided first, that it has been *properly presented* for payment to the party who was primarily liable, but who fails to make such payment; and second, that *proper notice* of such failure is given to him (the indorser) by the holder or by any subsequent indorser.

It should be noticed, too, that while the *maker* is the party primarily liable on a *note*, the *acceptor*—not the drawer—of a *bill of exchange*, is primarily liable thereon, the drawer being secondarily liable together with the indorsers.

Presentment for Payment.

Notes and bills must be very *promptly presented for payment, on the last day of grace, within business hours, by the holder or his authorized agent, at the place designated*—if there be such designation in the paper, or if there be none, then *at the place of business or residence of the party primarily liable thereon*.

All these precautions must be exactly observed in presenting paper for payment. Then if it be dishonored—that is, if the party who ought to pay, fails to do so—a *formal notice of such presentment of the paper for payment, and its dishonor*, properly describing and identifying the paper itself, *must be served within twenty-four hours on all the indorsers* (or such of them as it is desirable to hold liable), and also on the *drawer* in case of a bill of exchange, informing them that *payment is now demanded of them*. Having carefully followed all these prescribed steps, if none of the parties thus notified pays the sum due, any or all of them

may be sued ; but failure in any one of the necessary formalities by the holder of the paper, will relieve them from liability.

Each indorser in turn may hold all previous indorsers responsible to him, if he has to make payment.

Foreign bills of exchange, must be *protested by a notary*, as soon as dishonored. This is not necessary in the case of inland bills (drafts) or promissory notes, though it is often done.

If the person primarily liable is not to be found, having absconded or otherwise disappeared, the paper must be presented for payment at his *last place of residence*, it being legally presumed that funds may have been left there to meet it ; but if it is not paid, due notice of dishonor should then be sent to the indorsers as before explained.

Notice of dishonor is frequently sent by the holder *only to the last indorser*, when he is a reliable party ; and *he*, if he wishes to secure his own right of action over against the previous indorsers, in order to make himself good, *is bound to give them immediate notice*. Such notice from him is sufficient to enable the *holder* to sue them or any of them, as well as the last indorser, should he decide to do so. But in order to be *sure* of holding all indorsers, or any particular indorser, the holder must *himself notify* them or him.

The holder must send notice within twenty-four hours after dishonor, and *each indorser* who receives notice, has *twenty-four hours within which to notify such prior indorsers* as he may wish to hold liable to him. Thus A, B and C have indorsed a note which is dishonored by its maker, and C—the last indorser—receives due notice from the holder of such dishonor, on the day following the last day of grace. C is

thereby held responsible, and must pay the amount of the note to the holder. But if B is financially sound, C may recover from him the sum that he pays, providing he gives him due notice of the dishonor within the next twenty-four hours after he has received his own notice; and B, in turn, may likewise hold A responsible to him by sending notice within the specified time.

Accommodation Paper.

A word may be said here concerning "accommodation paper," as it is called.

Any party may, if he chooses, for personal or business reasons, *lend his own credit to another*, by means of an accommodation note or bill. That is, he may make a note in favor of, and deliver it to, the friend whom he wishes to accommodate, *without taking any consideration* from him therefor; then this payee may indorse the bill to a third party, and thereby raise money on it. It is the payee's duty to pay the amount when due, but if he fails to do so, the holder must present the note to the maker at maturity, as he would any other note, and the maker *cannot set up as a defence*, if sued on the note, that the payee gave no consideration for it, *even though the holder was aware* of this lack of consideration when he took the paper. Were it otherwise, the very object of accommodation paper would be defeated, for people would be afraid to take notes or bills, lest they might prove to have been given for accommodation.

In some cases, the holder can recover in a suit on accommodation paper, *only so much of its value as he actually gave* for it; but this is chiefly where he takes it as *collateral security for a debt*, or as *conditional pay-*

ment of a debt. [See Collateral Security, Chapters 13 and 18.] When one really gives a valuable consideration for such paper, probably even though he knows it to be accommodation paper, he can recover its face value, though he paid much less for it.

Defences Against Suit on Commercial Paper.

There are certain defences which may be made by any party who is sued on commercial paper.

No Consideration.

If the defendant can show by sufficient evidence that the holder of the paper gave no consideration for it—that he is *not a holder for value*—this is, as has already been shown, a good defence.

Notice of Equities.

As has also been stated before, it is a sufficient defence to show that the holder knew, or ought, from the circumstances of the case, to have known, some fact or facts in regard to the note or bill which would have been a good defence against the original payee, if he had himself sued on it; that is, that the plaintiff is “affected with notice of equities,” and therefore is *not a bona fide holder*.

Stolen Note.

Thus if, after a note has been regularly made and delivered, it is stolen from some holder, and put into circulation, and subsequently comes into the hands of a party who knew it to have been stolen, he is not a bona fide holder, and cannot maintain suit on the note against the maker or any indorser. But a bona fide holder may maintain suit on such a note.

Note Stolen Before Delivery.

But if the note was *stolen from the maker*, without the latter's negligence, before it was ever delivered by him, it is not, in fact, a note at all, delivery being, it will be remembered, an essential of the very life of a note. So if such a stolen paper gets into circulation, no one, however ignorant he may be of this fact, and though he may have given full value for the note, can maintain suit against the maker thereon.

Forged Note.

So if the note is forged, it *has no life*, and the one whose name is signed cannot be compelled to pay it.

One should always be very cautious in taking paper *if not familiar with the handwriting of the maker*; and even when familiar with it, should keep the name and address of the party from whom he receives the paper, whether the latter indorses it, or merely transfers it; for if the note proves void for any reason, the holder *may sue the party from whom he received it*, and recover back the money which he actually paid for it, and this defendant may in turn sue the one from whom he received it and recover back what he paid. None of the indorsers are liable, of course, *as indorsers*, but each is liable for the money which he has received, to the individual from whom he received it.

There are occasional cases, where a note or bill had its *origin in fraud*, and is therefore utterly void.

Notes or Bills Void by Statute.

Sometimes statutes are passed making notes or bills *absolutely void* which are given in defiance of some law of the state; and in this case, such bill or note is worthless (as commercial paper), in any hands

into which it comes. Thus in some states as has already been stated, bills or notes are void for usury. [See Abstracts, Title, "Interest".]

Material Alteration.

A plea that the paper has been *altered since it was first delivered*, may also be a good defense. After a bill, note, or check is once drawn, it should *never be altered* in the slightest degree. It is true that an alteration made *to correct an actual mistake*, does not injure the paper. But it is also true that *any material alteration, not made to correct a mistake, renders the paper utterly worthless in any hands*; and such a material alteration is *any change in the amount, the interest, the date, place of payment or names*.

In some cases, where paper is thus destroyed, without the fault of the holder, he may recover back the sum he paid for it. But it is exceedingly unsafe to make any alteration whatever in commercial paper, and care should also be taken by the party issuing it, to prevent *any subsequent alteration or forgery*. This is the reason why it is customary, in writing checks, to draw a line with the pen through the portion of the blank left for the amount which is not filled in naming the sum; for otherwise some one might fill up the blank space by words increasing it.

Thus if the check be drawn for "fifty dollars," and a blank be left before these words, the other words "one hundred and," might be inserted.

Overdue Paper.

Another matter important to be remembered is, that it is never safe to take commercial paper *after the date on which it has matured*. After this date has

passed, the paper is said to be "*overdue*;" and although overdue paper may be taken, and sued on by the one who thus takes it, and the maker may be compelled to pay it *if* he can put in no defense, such a suit is *open to any defense* which might have been set up by the maker against the original payee, had he kept and sued on the note himself.

Although one who takes an overdue note may be, in every other respect, bona fide, and may have given value for it, these facts *will not now protect him*, if there was originally any good defense to the note.

As regards the indorsers, their liability *entirely ceases* upon maturity of the note. If it is not presented to the maker at maturity, dishonored by him, and due notice of such presentment and dishonor sent promptly to them, they are forever discharged from all responsibility thereon.

When one *pays* a note or bill he should always *destroy it* at once, either by tearing or burning it, or by writing something across its face, so that it can by no possibility get into the market again; for if he does not thus "kill" the paper, it may get into circulation by being stolen or otherwise, and come into the hands of some holder who is ignorant of the state of affairs, and who may actually compel the maker to *pay it a second time*. Even if repayment could not be compelled, he would have to stand the expense of a suit. One should then, always insist upon having the note or bill returned when payment is made thereon, never trusting to any statement of the holder, that he will destroy it when he gets home, etc. He cannot compel payment at all, unless he actually *presents the note or bill itself* for payment.

CHAPTER XIII.

GUARANTY—SURETYSHIP—BONDS.

Guaranty Defined—Distinctions Between Guaranty and Suretyship—Guaranty or Suretyship Must Usually be Written—Alteration of the Contract Discharges Guarantor—Guaranty or Surety on a Promissory Note—Rights of a Guarantor or Surety—Consideration for a Guaranty—Negotiability of Guaranty—Surety's Responsibility—Bond Defined—Sureties or Collateral Security on Bonds.

Guaranty Defined.

A guaranty is a promise to pay another's debt, or to do any act to which another has bound himself, in case the latter does not himself pay the debt or do the act specified.

Distinction Between Guaranty and Suretyship.

A guaranty differs materially from a suretyship, though principally in this important point; that while a *guarantor's* promise cannot be enforced until the party for whom he guaranteed *absolutely fails* to keep his contract—a *surety's* promise binds him *equally and immediately with his principal*, so that, without any attempt to first secure performance from the latter, the surety may be sued, either alone, or jointly with his principal in the same suit.

Thus A and B make a contract by which A agrees

to pay to B a certain sum of money for certain work, and C becomes *surety* that A will pay the money, while D *guarantees* that he will do so. When B has performed the work, and the day for payment arrives, if payment is not made, and B thinks that C has more money than A, or for any other reason wishes to sue C he may do so at once; or he may sue A and C jointly. But he cannot sue D, until he shall have tried and failed to secure payment from A.

Another distinction to be noticed is that a guaranty can only be given to contracts which are oral or merely written without being sealed; while a suretyship may be given to any contract, sealed or unsealed.

How to Give a Guaranty or Suretyship.

In order that a guaranty or suretyship may be supported *by the same consideration* which supports the contract itself, it must be put *in writing*. An oral guaranty or suretyship is worthless unless a distinct consideration is given for it. It may be formally written out, or a mere memorandum of the agreement may be made, but in any case, to be valid without a separate consideration, it must be *signed by the guarantor or surety*, or by some party legally authorized to sign for him. [See Statute of Frauds, Chapter 18.]

So if you let a house to a tenant, whose financial standing you doubt, but whose wealthy brother says to you, "Let her have the house, and I'll see that she pays her rent," you must insist that this promise be written down and signed by him, if you hope to hold him to his agreement.

Alteration Discharges Guarantor.

It is important to remember that if one makes a

contract with another, and a third party guarantees that the latter shall perform his agreement, *no material alteration* (that is, no alteration of any importance) must afterward be made in the contract *without the consent of the guarantor*; for if such an alteration be made without his consent, he is thereby *discharged from all responsibility* in the matter, and you will not be able to hold him if the party for whom he gave the guaranty fails to keep his agreement.

So if one neglects to promptly use all legitimate means by which *to compel the other party to keep his agreement*, the guarantor is relieved from his responsibility by such negligence.

Guaranty or Surety on a Promissory Note.

A guarantor very often signs a promissory note, his guaranty being that the maker will pay it when due. This guaranty must be *distinctly written out and signed*, usually on the back of the note.

A surety on a note, on the contrary, *only writes his name*, usually below the maker's, on the face of the note, and his contract is not written out, because the *contract of the note itself* is his. He binds himself that it shall be paid, as much as the maker does, and if it is not paid, he may be sued at once, or jointly with the maker, as already explained. But a guarantor can be sued only if the proper *presentment for payment at maturity* of the note has been made to the *maker*, who has failed to pay it. Notice of such failure should be given to the guarantor, but it need not be given with the same degree of promptness as to indorsers, who—as already mentioned—are discharged from their liability if notice is not given them within twenty-four hours after dishonor.

Rights of a Guarantor or Surety.

Even if no notice of dishonor is given to a guarantor, he may be held responsible for the note in the majority of our states, *unless he can show in defence* that, by the failure to give him notice, he *actually lost an opportunity* which he would otherwise have had to make himself whole in the transaction. For of course a guarantor or a surety, if compelled to pay money on the contract of another, has an action against the latter by which he can recover back his money.

So if the holder of a guaranteed note presents it at maturity to the maker (who is then solvent, but dishonors the paper), and gives no notice of the fact to the guarantor, but after waiting some time, sues the guarantor thereon, the maker having meanwhile gone into insolvency, the guarantor can, in most states, defend by showing that, had demand upon him been made promptly after dishonor of the note, he might have been able to reimburse himself from the maker, whereas it has now become impossible.

Consideration for a Guaranty.

In order that *the same consideration* may support both the contract itself, and the guaranty, the latter promise must not only be in writing, as already suggested, but it must also be given *simultaneously* with that whose execution it guarantees. If, *before or after* the contract itself, another person guarantees that one of the parties thereto will keep his agreement, *some distinct consideration* for such a guarantee—*itself a distinct contract*—must pass to the guarantor from the party to whom the promise is given.

Thus A and B enter into a contract. Some time later, A fears that B does not intend to carry out his

part of the agreement, and to assure him to the contrary, B brings C, who gives a guaranty to A that B will do as he agreed. In order to make this guaranty binding, A must give some consideration therefor to C. [See subject of Consideration, Chapter 3.] In such case, where a new consideration is given, the guaranty is binding even though it be only an oral one, as has already been said.

Negotiability of Guaranty.

Another important point which distinguishes a guaranty from an indorsement, is that, although the former be written on the back of a negotiable promissory note, the guaranty itself is not negotiable *unless it contains express words of negotiability*. The guaranty is a separate contract, and if made only to the payee, no subsequent holder of the paper can sue the guarantor on it.

If the guaranty and the note are written *on the same paper*, and both are made payable "to order," or "to bearer," both are negotiable and they pass together, and the guarantor is responsible to any bona fide holder for value.

If the guaranty is written on a *separate* piece of paper, as is sometimes the case, it is doubtful whether or not it would be negotiable, even though negotiable words were used both in it, and in the note which it guarantees.

Surety's Responsibility.

The surety's contract, on the contrary, being *that of his principal*, needs no separate consideration; it is negotiable without words to that effect other than those in the note itself; and he may be sued on the

note, when due, *without any notice whatever* that it has been dishonored by the maker; he may even be sued on it without its having been presented to the maker at all, or to himself. It is the business of the maker of a note *to pay it when it is due*, whether it is presented to him at all or not, and it is equally the surety's business.

If a note is made payable at a particular place—at a bank, for instance, as is often the case, or at the maker's place of business—it is enough for the maker to show, in defense to any subsequent suit on the note, that he was there at the place named, on the day of maturity, *ready to take up the note*, but that the holder did not appear; and by such defense, the maker can throw the costs of the suit on the plaintiff, though he must still pay the money due on the note. But if no place of payment is named, it is the business of the maker, and also of the surety, to *find the holder of the note on maturity thereof, and pay it*, or else stand the costs of any suit that may be brought. All the formalities concerning the presentment of a note to the maker, and giving notice of its dishonor to the indorsers, which it has been sought to impress on the attention of readers, are only for the purpose of holding the *indorsers* to their contract, in case the maker should fail to pay.

Bond Defined.

A bond is a promise, *written and sealed*, usually for the payment of a sum of money.

It may be an unconditional promise, the promisor binding himself, his heirs, executors and administrators to pay a certain sum at a certain time, or, more commonly, it is a *conditional promise*, setting forth that if

the promissor shall perform some certain act, then his promise to pay money shall be void, or that it shall then be binding.

Thus, one who hires a house may give a bond to the owner, setting forth that, in case of his failure to pay the rent regularly according to the stipulations of the lease, he will forfeit to the owner of the house a certain sum of money; or one who takes an office of trust may give a bond stipulating that, should he do any act unworthy of the trust, a certain sum of money shall be forfeited by him therefor.

Sureties or Collateral Security on Bonds.

It is important always to have *reliable sureties* on a bond, who are then bound equally with the principal, as has already been shown. A bond may also be secured if the promissor deposits with the party to whom he gives the bond, some valuable property as *collateral security*, upon which the party to whom it is delivered can realize (that is, by disposing of it and reimbursing himself from the proceeds), if the condition of the bond be broken. Of course the terms of such a deposit should be clearly stipulated, so that, upon performance of the condition by the promissor, he may reclaim his property.

No action can be taken on a bond if it has lain dormant for twenty years. [See Statute of Limitations, Chapter 18, also Abstracts on the subject.]

If a promissory note be sealed, it becomes a bond, and its negotiability is destroyed.

CHAPTER XIV.

ASSIGNMENT, ATTACHMENT, GARNISHMENT, ETC.

Assignment of Claims—Assignment for Benefit of Creditors in Insolvency—Assignment of Insurance Policy, and of Mortgages—Collection of Debts—Arrest for Debt—Attachment of Property for Debt—Garnishee or Trustee Process—Exempted Property—Homestead Exemptions—Tender of Money Due—Receipts for Money Paid—Release of all Claims and Demands, etc.

Assignment of Claims.

Every right of action, or interest in property, real or personal, *may be assigned* by the party to whom it belongs, to some other party, and the latter then has *all the rights and interests* concerning the matter which the former had. He who makes the assignment is called the *assignor*; he to whom the assignment runs is called the *assignee*.

The *whole* of any property may be thus made over to another by assignment, or *any right or interest therein* may be.

Thus the lessee of a house, may, if the lease does not prohibit it, assign the lease to another who is then entitled to possession of the house for the remainder of the term, and is also liable to the owner of the house for the performance of the promises by which

the original lessee had bound himself. But an assignee may in turn assign to another, and thus rid himself of his obligations. [See Leases, Chapter 23.]

The assignee not only assumes any obligations by which the assignor was bound in the matter, but he also has all the advantages; thus if the assignment is of a contract, for the performance of which collateral security was given by the other party thereto, the assignor must deliver up such collateral to his assignee, unless the agreement stipulate otherwise.

One to whom any debt is due, *may assign to another the right to collect the debt*. In such case, the assignee must—unless some statute otherwise provides—sue in the name of the assignor, and any defense which might be set up against the latter is good also against the former. This has already been explained in the case of an unnegotiable promissory note.

Assignment for Benefit of Creditors.

It is very common for a debtor to make an assignment of personal property for the benefit of creditors.

So when a debtor is obliged to go into insolvency, one or more assignees are appointed to take charge of his property, collect his debts, and settle with his creditors by paying to each *a certain proportion of his claim*. Sometimes the business in which the insolvent was engaged is carried on by the assignees, if it appears that this is most favorable to the creditors' interests; or it may be closed up, if this seems better.

Some personal property of the insolvent is *exempted*, and cannot be taken by the assignees. The wearing apparel and personal ornaments to a reasonable value, of himself, his wife and children are usually exempted, but the statutes and decisions in the vari-

ous states settle this matter, as also all other questions concerning insolvency, and it does not seem necessary or practicable to go into them in this work. There is now no bankruptcy law in this country. [See Abstracts, Title, "Insolvency."]

An assignment ought always to be *written*, but it need not be sealed, even though the contract assigned by it is sealed.

To give an assignment of a policy of insurance, the consent of the under-writers must be given.

Mortgages of real and personal property are frequently assigned by the mortgagee to another.

Collection of Debts.

There are, in every state, certain means provided by which creditors can compel the payment of debts by those who have any money or property with which to make payment. [See Abstracts, Title, "Collection of Debts."]

Arrest for Debt.

In most states, *a debtor may be arrested and imprisoned* under certain circumstances, but in several states there is no arrest for debt, and in some others, *no woman* can be thus arrested.

The circumstances just referred to are usually as follows: If the creditor has cause to believe that his debtor *intends to leave the state* and thereby to abandon his debt and escape suit thereon; or that the debtor was *guilty of fraud in the original making of the contract*. The statutes in the various states regulating this matter of the collection of debts differ very much. [See Abstracts, Title, "Arrest."]

Attachment of Property for Debt.

Whether the debtor may be arrested or not, *his property may be attached* to satisfy the demands of any creditor who brings suit against him. But *certain property is exempt* from liability and cannot be attached for debt, as will be shown later.

In the New England states, every summons to a party to appear and defend himself in an action of contract (as distinguished from an action of tort) includes as a matter of course an attachment of the defendant's property. But elsewhere, a special writ of attachment must be served. A writ of attachment will not generally be given in an action of tort.

The property attached still remains that of the defendant, and the plaintiff acquires no right therein, but *the attachment is a lien on the property*, by which the defendant is prevented from disposing of it till the case is decided. [A lien is the right which one person may have to hold possession of the property of another, as a security for some debt or charge.] If judgment is given for the plaintiff, the amount of judgment and costs of suit may be satisfied by selling the property; if for defendant the attachment is thereby dissolved, and he regains full control over the property.

While suit is pending, the constable or sheriff who served the attachment has control of the property, and is responsible for it. In New England, he may give it into the charge of a responsible person usually called a *keeper*, who must take constant care of it, either on the premises of the defendant, or by taking it elsewhere, as the parties may decide. A keeper put into the place of business of the debtor,

takes charge of the business, books and money, and is frequently a very undesirable guest, so that the debtor is glad to be relieved of his company by giving a bond with sureties, that he will pay the judgment debt if the case is decided against him.

Garnishee or Trustee Process.

Another method of attachment is that variously known as the *trustee process*, *garnishee process*, or *process of foreign attachment*, by means of which debts are frequently collected.

Thus A owes money to B, and has nothing in his possession with which to pay it; but C owes money to A for wages or services, or for a loan, or for goods sold, or for something else, and the law considers him to be a trustee for A to the amount in which he is indebted to him, and will allow B to sue him (C) as such trustee, and to recover as much of the money owing to A as is necessary for the payment of A's debt to B. It is of course a sufficient defense to such a suit, if C can show that he owes A nothing, and has no property of A's in his possession. [See Abstracts, Title, "Garnishment."]

Exempted Property.

In all states there are *exemption laws*, by which certain property is *secured to the owner* and cannot be taken for his debts. The intent of these laws is that no one shall be reduced to actual starvation or cold, or be left without a bed, or without certain implements of trade or business stock, wherewith to earn a living. The *homestead laws* which prevail in a large number of states also make some provision for securing a roof over the heads of a debtor and his

family. Under the Abstracts of Statutes in the various states, the property exempted is enumerated as fully as space will allow. [See Abstracts, Title, "Exemptions."]

Tender of Money Due.

It is always a good defence to the costs of a suit brought to recover a debt, if the debtor can prove that he actually *tendered the money when due*, to the plaintiff, who refused to take it; unless the plaintiff can show, in his turn, that although he refused to take it when tendered, he *asked for it afterward*, and it was not paid.

To make such a tender of money as will be a good defence, however, *the exact sum due* must be *distinctly offered* to the creditor, at the *time when due*. It is not enough if the debtor merely tells the creditor that he has the money and is ready to pay; he must offer the money itself, taking care not to let it go out of his possession, until a receipt is ready to be exchanged for it.

This rule as to tender is often important to one who has hired a house on a lease which provides that rent shall be paid at stated intervals, or else the lease shall become void. The lessor may, because the rent is low, because of some prejudice against the tenant, or for some other reason not in itself sufficient to vacate the lease, wish to get rid of the tenant, and may try to prevent the latter from paying his rent on the day stipulated, and then take advantage of this breach of contract to eject him. It is always important therefore, that a tenant shall be able to prove that he made a good tender of the money. If there is no place named where the payment shall be

made, the tenant should try to find the lessor at his place of business or residence, and if unable to do this, should tender the rent on the exact day when due, to some member of his family or other person who might be reasonably supposed to have authority as his agent.

A Note or Check as Payment of a Debt.

A check or promissory note, if given in payment for a debt, is *not actual payment thereof, until the money shall have been obtained thereon.*

In New England, the *legal presumption* is that, if nothing was said or intimated to the contrary, the parties both intended that the check or note *should be in actual payment* of the debt; but outside of New England, the presumption is just *the other way*, and if the check or note is not honored, the creditor may sue on the *old claim* itself. In New England more especially than elsewhere, therefore, people should be cautious about taking checks or notes in payment of debts, and should be very prompt in cashing them.

Receipts.

A receipt which is given when money is paid is a mere memorandum of payment; it is *only evidence*—though most excellent evidence—of a contract; but *not being itself a contract*, it may be shown, by evidence of any kind, if a suit arises concerning the payment, that the receipt falsely states the amount or time of payment, or some other fact concerning it. [See Appendix, for blank form of receipt.] The rule of law that oral evidence is not admissible to vary a written contract, of course cannot, therefore, apply to a receipt.

Releases.

If it is intended to give a paper which will *absolutely settle the matter*, and which—in absence of fraud—cannot be opened up again, a *release* should be given instead of a receipt. [See Appendix, for blank form of release.]

A “*release of all claims and demands*” which are held by the party giving it, against the party to whom it is given, may be expressed in general, as “of all claims and demands of whatever nature;” or it may be limited to some one matter, as “of all claims and demands concerning” etc. In either case, *the release is a contract*, and not subject to be opened up as a mere receipt may be. It is also well to put a release *under seal*, thereby preventing the question of consideration from arising at any future time.

CHAPTER XV.

VARIOUS WAYS OF TRANSFERRING PROPERTY.

*Transfer by Gift—Transfer in Fraud of Creditors—
Gifts in Prospect of Death—Loaning Personal Prop-
erty—The Care to be Taken of Loaned Property—
Test as to Degree of Care—Pawn or Pledge of Per-
sonalty—Letting or Hiring Personalty—Property
Intrusted for Repairs, etc.*

A contract may be for the outright sale of prop-erty, involving a complete transfer of title ; or it may be only for a partial transfer of title, of possession, or of both.

Transfer by Gift.

The title to property may pass by means of gift, and though this is not a matter of contract, it may be best mentioned here.

A gift needs no consideration to support it, the pres-ence or absence of a consideration being the test by which to determine whether the agreement is one of contract or one of gift.

Therefore an agreement *to make a gift in the future* cannot be legally enforced, as an agreement to make a contract in the future may be, because only con-tracts can be enforced. But if *present possession is ac-
tually given* with the intention of passing the title thereby, the property becomes that of the party to

whom it is given, and he may defend his right to it against all others, the giver included. Delivery of the gift is absolutely essential to this change of title.

Thus if a man promises in a letter that he will relinquish his right in a certain estate to his correspondent, and gives directions to his attorney to prepare the papers by which to carry out this intention, but dies before signing the deed of conveyance, no title passes, and his correspondent gains nothing. So also a dear old lady who was superstitiously sensitive about making a will, once said to her favorite niece:

"Now I want you to have certain articles of mine" (carefully specifying them) "at my death, and to make sure that they will really be yours, I give them to you now. I will keep them for you during the rest of my life, but you are to consider them as yours from this time forth."

When she died some years later, the articles referred to went with the rest of her possessions to her heirs, and the niece could not have claimed them, had she attempted to do so.

Transfer in Fraud of Creditors.

Gifts cannot be made *with the intent of defrauding creditors*. Thus a man who is insolvent, or who has good reason to think that he will shortly become insolvent, cannot settle his property on his wife or children. If he attempts to do so, his creditors can take it and apply it to the payment of their claims.

Neither can a man so situated sell his property, even for its full value, so as to give a good title, to one who has knowledge, or who, from the circumstances of the case, ought to have knowledge, of his financial situation. The creditors can still take it, if

they can show *collusive knowledge of the fraud* on the part of the party who holds it. But an absolutely innocent party, who knows nothing of the fraudulent intent of the seller of the property, may take it and hold it against creditors or any one else.

Gifts in Prospect of Death.

Gifts may be made during life, or in some few cases, they may be made *to take effect after the death of the giver*.

Thus, if *shortly before death* one gives to another a promissory note of a *third party*, he to whom it is given may hold it and collect its value from the maker of the note, after the death of the giver. But a note made by the *giver himself* in his last sickness, and turned over to some party whom he wished to favor, would probably not be collectible from his estate.

If a man gives another a check on a bank, whether in his last sickness or not, and whether as a gift, or for a consideration, and it is not presented for payment during his lifetime, the bank will not cash it, as it is worthless. So the transfer of a bank book does not transfer any right to the money deposited, unless it be accompanied by an order on the bank, signed by the depositor, transferring his entire interest to the party to whom the book is delivered, in which case, it has been held in Massachusetts to be a valid assignment of the money. But the experiment is not a safe one to make.

Transfer of Possession.

As has been already said, a contract may be for the transfer of the entire title and right to property, or it may be merely for the transfer of possession, as by loaning or letting it. The latter method will be first

considered, leaving sales, conveyances, and mortgages (which last are practically little else than conditional sales) for later chapters.

Loaning Personal Property.

Only personal property is capable of being loaned, though both real and personal property may be hired, let or leased.

Personal property may be loaned or lent by the owner in several ways. It may be done gratuitously, and *merely to benefit the party to whom it is intrusted*; in which case the latter is bound to take *great care* of it and to return it as agreed. If he does not so return it, or if he returns it in a damaged condition, when by the exercise of especial care he could have preserved it undamaged, he is liable to the owner.

Property may be loaned or "stored" by the owner with a party who gratuitously takes charge of it, *merely to accommodate the owner*. In such case, also, the party to whom it is intrusted is responsible for its safe keeping, and is liable to the owner for any loss or damage which might have been prevented by the exercise of a *slight amount of care*.

Care to be Taken of Loaned Property.

It is impossible to say *what degree of care* must be used in all these cases. The jury settles that point each time on due consideration of the circumstances of each particular case.

Thus if valuable jewelry should be intrusted to the care of a jeweler, who gratuitously consents to keep it for the owner, such a man, who should be aware of the value of the property, and who should have adequate means of protection for it, would be responsible if it was not put in a safe place, and was

consequently lost or stolen. But if the same property should be intrusted to a blacksmith, who is not told, and does not know its value, and who has no place of especial safety in which to put it, but who gratuitously undertakes to care for it, and does so as well as he reasonably can, he is not responsible if it is lost or stolen.

So it will be seen that the degree of care required, often depends on the *amount of skill and knowledge* which the party who does the service has, or assumes to have. It is a *binding contract*, the consideration of which is the *trust and confidence placed in him* by the party who confides himself or his property to his care and keeping.

Test of Care.

The general test by which to decide the degree of care required in any given case therefore is, *what would a person of ordinary prudence, care and skill have done under the same circumstances?* If property was intrusted to a person, and lost or damaged, the question is, did he exercise the same care in its preservation which a man of average prudence, under the same circumstances, and in the same condition of life, would have done? Or, if he were a professional man, did he exercise the same skill, care and prudence in treating his patient, or in conducting his client's cause, which an ordinarily skilful and prudent physician or lawyer would have done? If he did, it is enough; if not, he must answer for his negligence in damages. [See further, Negligence, Chapter 40.]

• *Pawn or Pledge of Personalty.*

Property is sometimes deposited as security for a debt. This is the case when articles are pawned or

pledged for a loan of money. The pledged articles must be *carefully kept*. If used during the time, as for instance, if the article is a piece of jewelry, and the person with whom it is deposited wears it, he is responsible to the owner for any loss or damage; because he has no real right to use it, but only to keep it until the debt is paid. If the debt is not paid at the time specified, the party holding the property may, after due notice to the owner (unless such notice has been waived), sell it, deduct the debt, interest, and expenses of sale from the proceeds, and give the surplus, if any, to the owner. There are statutes in each state regulating this matter of pledged goods, and they must be carefully followed in every instance. The information above given applies more especially to pledges for debt given between private parties, than to professional pawnbrokers.

Letting or Hiring Personality.

The temporary possession of property is most frequently transferred by letting or hiring.

In these cases, *a benefit is to be gained by both parties*, the one having a right to the temporary control and use of the property, and the other retaining the ownership and right to regain the property, and having also an absolute right to the money or other compensation which the hirer agrees to pay.

The owner cannot interfere with the temporary rights of the hirer in the property, so long as the latter keeps to his agreement to pay therefor, and takes suitable care of it. The hirer is only bound, however, to exercise *such care of it as an ordinarily prudent man would take of his own property*. If owing to his negligence, the property is lost or injured, he

must make the loss good to the owner. If it is lost or injured without his fault, the owner must bear the loss.

Greater care must be exercised in keeping very valuable property, than that of much less value, because a prudent man would do this.

Property Intrusted for Repairs, etc.

The same rule of law applies to an engagement by a mechanic or workman of any kind, to put *labor and time* upon property for a recompense. If a dressmaker takes cloth and trimmings from a customer and agrees to make it into a dress, she is bound to exercise due diligence and skill in her work, and to take as good care of the materials, and use them as economically as reliable dressmakers usually do.

CHAPTER XVI.

VARIOUS WAYS OF TRANSFERRING PROPERTY, CONTINUED.

Responsibility of Inn-Keepers and Hotel Proprietors for Property Intrusted to Them—Keepers of Lodging or Boarding Houses and Their Responsibilities—Lien on Luggage, etc.—Responsibilities of Common Carriers—Liability to Passengers—Liability for Luggage—Ejection of a Trespasser—Transfer of Property by Act of the Law—By Descent and Distribution, by Marriage, Insolvency, or Judicial Decree—Original Acquisition of Property—Transfer of Property by Finding—Property Gained by Intellectual Labor—Patents—Copyrights.

There are two classes of people to whom property is customarily intrusted, who are bound by law to take greater care of such property than is required in ordinary cases, for reasons of public policy which will be readily perceived. These are innkeepers, and common carriers.

Responsibilities of Innkeepers.

Every innkeeper and hotel proprietor is *bound to take absolute care* of the baggage, horses, carriages and other property of his guests from the moment that it is intrusted to him. This includes not only actual guests, but also those who intend to become

such, and who send on their property in advance.

He is responsible for the thefts or negligence of his servants, and for thefts committed by other guests or outsiders. He is only relieved from responsibility when the loss or injury occurs through the negligence of *the guest himself*, or by the "*act of God*," or *public enemies*. It is rather difficult, sometimes, to determine just what cases the term, "act of God" covers, but it may be defined as "an accident which arises from a cause which operates without interference or aid from man; for example, a fire caused by a stroke of lightning."

A landlord may relieve himself from liability to a certain extent, by imposing reasonable regulations on his guests. Thus, printed stipulations are often seen on the doors of hotel rooms, requiring guests to deposit valuables in the office safe, and declaring that otherwise the proprietors will not be responsible for them. If a guest fails to act upon this request, it would probably be held the result of his own negligence, if, leaving valuables in his room, they should be stolen. Only reasonable restrictions can be imposed on guests however, and only reasonable rates charged for accommodation. An innkeeper cannot lawfully *refuse to receive* any guest to the extent of his reasonable accommodations, who presents himself in a suitable condition to be received.

In most states, the responsibilities and duties of innkeepers are more or less regulated by statutes.

Keepers of Lodging or Boarding Houses.

No such especial and absolute responsibility is demanded of keepers of lodging houses or boarding houses, they being governed by the ordinary rules of

law, and responsible for the acts of their servants only on the general principles of agency.

Lien on Luggage, etc.

They have *no lien on the luggage* or other goods of their boarders or lodgers, but an *innkeeper has such a lien*, and may retain possession of a guest's trunk, clothing, horse or other property as security for an unpaid bill. One may, however, be a boarder in a hotel instead of a transient guest, and then there is no lien on his property, and no special responsibility on the part of the proprietor to take care of it. The test as to whether or not he is a boarder, is probably this: If he makes a special bargain to stay a *definite time*, he is a boarder; but if he stays on indefinitely, though for a long time, he is a guest.

It has been judicially decided that an inn or hotel is any house where a traveler is provided with everything for which he has occasion while traveling. No sign is needed to make it a hotel.

Special statute in any state may give to lodging or boarding house keepers a lien on the property of those whom they furnish with room or board. Thus a statute in Massachusetts gives such a lien to the keeper of a boarding house, though not to the keeper of a lodging house.

Responsibilities of Common Carriers.

Common carriers are those who *undertake generally, as a business*—not as a casual occupation—and for *all people indifferently*, to convey goods or passengers, and deliver them at a place appointed, for hire, with or without a special agreement as to price.

Chancellor Kent in his famous Commentaries, says

of common carriers: "They consist of two distinct classes of men, namely, inland carriers by land or water, and carriers by sea. In the aggregate body are included the owners of stage wagons and coaches, and railroad cars, who carry goods as well as passengers for hire, wagoners, teamsters, cartmen, porters, the masters and owners of ships, vessels and all water craft. * * * As they hold themselves to the world as common carriers for a reasonable compensation, they assume to do, and are bound to do, what is required of them in the course of their employment, if they have the requisite convenience to carry, and are offered a reasonable or customary price; and if they refuse without just ground, they are liable to an action."

To quote further from the same authority, "If he be a common carrier, he is in the nature of an insurer, and is answerable for accidents and thefts, and even for a loss by robbery. He is answerable for all losses which do not fall within the excepted cases of the act of God and public enemies."

Liability to Passengers.

Common carriers are not liable for injury to passengers to the same absolute degree that they are for goods, because they have absolute control over the latter, but not over the former. But they must take the *greatest care of passengers*, nevertheless, and *very slight negligence* on their part or that of their servants, will render them liable in damages for injury to passengers. To recover such damages, however, the passenger must show that *he himself exercised due care*, so that his injury could not be ascribed to his own negligence.

Liability for Luggage.

As to a passenger's baggage, common carriers are liable for its loss, but not for its contents if they are more valuable than the ordinary contents of traveling trunks, etc. Railroad companies often limit the amount of luggage and contents for which they will be responsible, and by printing such limitations on the tickets, or otherwise giving notice thereof to passengers—said limitations being reasonable ones—they relieve themselves from further liability. Also, the statutes of various states regulate more or less the responsibility of common carriers. As a rule, if a passenger carries merchandise in his luggage, a company is not responsible for it; only clothing etc., should be thus carried.

Ejection of a Trespasser.

If any person attempts to ride in the car or other conveyance of a common carrier, without payment of the regular fare, he is a *trespasser*, and may be ejected by the servant of the company whose business it is to collect fares or tickets. In ejecting him, however, the servant must use no more force than is necessary. If he is unduly severe, the passenger, trespasser though he be, may maintain an action against him and against the company for assault and battery, and recover proportionate damages. [See *Trespass*, and *Assault and Battery*, Chapter 39.]

Transfer of Property by Act of the Law.

Title to property may be gained in other ways besides the acts of the parties themselves. It may be transferred by act of the law, as by the *descent and distribution of the property of a deceased person* who

leaves no will, among his heirs and personal representatives; the transfer, at common law, of the *personal property of a woman to her husband*, at marriage; the transfer of the *property of an insolvent to assignees* for the benefit of creditors; the forcible transfer of the property of one against whom *a judgment in court* has been given, for the satisfaction of that judgment, and in some other ways.

Original Acquisition of Property.

Title to property may also be acquired in a few cases by "original acquisition," as it is legally phrased. In the earlier ages, mere *occupancy of land* gave title thereto, but as society became established, this right was made to yield to the demands of peace and order; and "squatters" cannot now gain title to land except as the law allows them. [But see Homestead, Pre-emption and Mining Laws, Chapter 26.]

Transfer of Property by Finding.

A remnant of this ancient right still exists in the title which the *finder* may gain in property which has been *lost or designedly abandoned* by the owner. If he does not claim it as his, it becomes the absolute property of the finder.

Thus if a customer or caller finds a purse, money, or other article *on the floor of a store*, the finder can claim it unless the owner can be found. But if he finds the purse lying *on a counter or table* in the store, he has no claim to it, for its possession belongs to the proprietor of the store, the presumption in such a case being that the owner left it there in the latter's keeping until called for, and if such claim is never made by the owner, the title becomes absolute in him.

Property Gained by Intellectual Labor.

The most important way in which title is now gained by original acquisition is *by intellectual labor*.

Every individual has the *first right to the products of his own brain*, and it is in recognition of this principle, and to encourage inventors and writers that the patent and copyright laws have been passed, securing to them for a limited time, the right to the exclusive enjoyment of their inventions and works.

Patents.

A patent is a grant by the United States or other sovereign country, of the exclusive privilege of making, using, and vending, and authorizing others to make, use and vend, an invention. In the United States, this privilege is for the term of *seventeen years*.

Any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof not before known or used by others in this country, and not at the time patented or described in any printed publication in this or any foreign country, is such an invention as may be patented. A *mere idea* of a machine or an improvement cannot be patented, unless the idea be embodied by the construction of the machine itself or a model, or by a full drawing or other such *exact description* that a mechanic could construct the machine therefrom.

One who has actually made a valuable invention cannot get a patent for it if it has been for *more than two years* in public use or on sale; nor if he has *once abandoned it to the public*; nor if it has been *previously invented* or discovered by another in this country; nor if it has been *patented or described in any printed publication in any foreign country*.

The fees to the government, payable in advance, are \$15 on every application for a patent, and \$30 when the patent issues. Besides this there is the draughtsman's bill, for the law requires a drawing or drawings to accompany the specification (where the nature of the case admits of them), and the fee to an attorney for drawing up such a specification as will make the patent reliable and valuable. [See as to Infringements of Patents, Chapter 39.]

Copyrights.

A copyright is good for *twenty-eight years*, with the right of *renewal for fourteen years* more; and may be claimed by the author, inventor, designer, or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, photograph, or negative thereof; or of a painting, drawing, chromo, statue, statuary, and of models and designs intended to be perfected as works of the fine arts; or it may be claimed by the executors, administrators or assigns of any such person, who has complied with certain preliminary requirements.

Application for a copyright must be made by the *author himself*, and may be made by any citizen of the United States, or resident therein. Application for a copyright may be made by a simple, informal letter addressed to the Librarian of Congress at Washington, District of Columbia, accompanied by a printed copy of the title of the book or other article, or a description of the painting, drawing, etc., and with a fee of fifty cents.

Before obtaining the copyright, he must also send to the librarian, within ten days from the publication thereof, two copies of such copyrighted book or

other article, or a photograph of the painting, etc.

For every certified copy of the copyright, desired by the author, fifty cents must be paid ; for recording any assignment of the copyright to another, one dollar ; and one dollar for each copy required of such assignment. [See as to Infringement of Copyrights, Chapter 39.]

CHAPTER XVII.

TRANSFER OF PROPERTY BY SALE.

Definition of a Sale—Conditional Sales—To Be Returned if Not Satisfactory—Condition as to Kind—Conditions in Favor of Seller—Sale "With All Faults"—Sales "on Installments"—Warranties—Consideration for a Warranty—Care Necessary in Taking a Warranty—Warranty Should Be Exact—Implied Warranties—That Food is Fit for Consumption—Separation and Completion of Goods Necessary to a Sale—Delivery Necessary to a Sale—As to Creditors or Purchasers—Seller's Lien for Purchase Money—Seller's Right of Stoppage in Transitu.

The absolute transfer of the entire title to personal property, when made by the act of the parties, and when not a gift, is effected by means of a *sale*. A similar transfer of title to real property is called a *conveyance*. A conveyance is usually a sale, but it is necessarily attended with more formalities than in an ordinary sale of personal property, the possession of which may be actually transferred. *The mere possession of personal property creates a legal presumption that its possessor is its owner*, but there is no such presumption that the occupant of a house is its owner.

The sale of personal property will be first considered, and later the conveyance of real property.

Definition of a Sale.

A sale is "a transfer of the absolute or general property in a thing for a price in money."

No one can give a good title to that which he does not own; therefore a thief cannot give a title to property which he has stolen, and the real owner may take immediate possession of his own, in whatever hands he may find it. (An exception to this rule exists in the case of a promissory note or bill of exchange, stolen *after original delivery*, and coming into the hands of a *bona fide holder for value*. [See Chapter 12.]) Of course the owner must be *able to prove* that the property is his, in order to claim it, and this is often difficult, and sometimes impossible to do, especially when it has no distinguishing characteristics, as in the case of money upon which no private mark has been put.

When no especial arrangements are made, there is a legal presumption that every sale is to be consummated at once *by delivery of the property and payment of the price*. If there is neither delivery nor payment, and the parties part without any further agreement, there is no sale, and neither party is bound, unless it can be shown that it was understood that time was to be given within which the bargain might be consummated.

Conditional Sales.

Very many sales are made on some condition, and such condition may be in favor of the buyer; as for example, that the property may be returned if it does not prove satisfactory. This condition is often *implied* where there is a fixed and general *custom* of the kind in the neighborhood or at the particular establishment where the sale is made.

If any time is fixed for the trial, the goods must be returned *within the time*, or else the sale becomes absolute. If no time is fixed, a *reasonable* time, considering all the facts of the case, is allowed. If the goods are not satisfactory, and before the time expires they are ruined or injured without fault or negligence of the buyer, the loss is on the seller, for no title has passed to the buyer. If lost by the buyer's fault, he must make it good to the seller.

Condition as to Kind.

Conditions are also often made concerning *the kind or character* of the thing bought. The condition is *always implied* that the thing delivered shall be *substantially the thing bought*, but there is no implied condition, or warranty, of the *quality* of the article, and it is often very difficult to tell whether the failure of the article delivered to correspond with the article sold, is *one of kind* or *one of quality*.

In Massachusetts, it has been held that *the buyer* may decide whether or not the goods are satisfactory. In Vermont the test is whether or not *a reasonable man* would be satisfied. Decisions in each state settle the law therein on the subject.

Conditions in Favor of the Seller.

The condition may be in favor of the seller, as for example, that the article sold shall be taken "*with all faults*," or that the title shall remain in the seller *until the entire price is paid* by the buyer.

Sales "on Installments."

This latter condition is very often imposed by sellers of household goods, pianos, sewing machines, etc.,

on installments, and is often very much indeed in favor of the seller; for not only can he reclaim the property from the buyer if the payment of the last small installment is not promptly made, but he can even reclaim it from *innocent third persons* to whom the buyer may have sold it, for the latter not yet having gained the title to the property, of course cannot pass it to any other. Neither have the buyer's creditors any claim on such property.

Where, therefore, articles are bought "on the installment plan," it is greatly to the buyer's advantage to make an arrangement by which the title goes to him at once, he giving a *mortgage back for the unpaid purchase money*; for in such a case, the title is in him from the start. Dealers are generally very shrewd in this matter, however, and insist on making a *conditional sale*, retaining the title to the property; often, indeed, expressing the contract in the form of a temporary lease of the article, the sale to take place and title to pass in the future, when a certain sum shall have been paid for it, as rent or otherwise.

In Massachusetts, a statute was recently passed, somewhat favorable to the purchaser in such cases; it being provided that when a sale of personal property is made on the condition that the title to the property sold shall not pass until the price is paid in full, and the seller takes from the purchaser possession of the property for failure to comply with such condition, the purchaser shall have the right, at any time within fifteen days after such taking, to *redeem the property* by paying to the seller the full amount of the price then unpaid, together with interest and all lawful charges and expenses due to the seller.

Warranties.

Sales are often accompanied by warranties guaranteeing the *kind, quality, condition or other characteristic* of the thing sold.

A warranty is an assurance by the seller to the buyer that some particular state of facts exists, or does not exist, in the thing sold.

If the warranty is false, the buyer may *disaffirm the sale*, and refuse to take the goods when they are delivered; or he may *return them and reclaim his money* if already paid; or he may affirm the sale, keep the goods, *and bring suit for damages for breach of warranty.*

Fraud is not necessarily an element of a breach of warranty, for if the seller really believes that he is telling the truth, he is not thereby relieved from his responsibility in the matter.

A seller is *bound to know the truth* of his warranty, and if he is ignorant thereof, the loss is his own. He should not have given a warranty in such a case.

Consideration for a Warranty.

If the warranty is made substantially at the same time as the sale, no extra consideration is necessary, it being a part of the main contract; but if it was given *before the negotiations began, or after they terminated*, it is a separate contract, requiring a separate consideration, without which it is valueless.

Care in Taking a Warranty.

It would always be well to remember this when taking a warranty on goods. Do not first say, "I will take it," and then say, "Will you warrant it?" Reverse the order of your dealings.

It is always well, too, to have the warranty *in writ-*

ing, that its terms may be exactly understood, and that no dispute may arise between witnesses to a conversation, which one may have understood to include a warranty, while another may not have so understood it. If the contract of sale is itself in writing, it is especially important that the warranty be also in writing.

Warranty Should Be Exact.

A warranty, to be reliable, should be *in very exact words*, and one must not mistake mere "dealers' talk" for a warranty. The law admits the fact that those who have goods to sell will display them and describe them to their best possible advantage, and if the goods are *open to inspection by the buyer*, it holds that he should examine for himself before purchasing, and should *trust his own judgment* instead of the word of the seller. The legal maxim "*Caveat emptor*" (let the purchaser beware) applies in every case of a sale, and should never be forgotten.

A seller may give some expression of opinion or judgment concerning the goods, *sounding very like a warranty*, without really being one. The buyer should be cautious, and protect himself. If the seller says—"You need not be afraid to take that calico; I should not be afraid to warrant that it would wash," these words constitute no warranty whatever, and the colors may all wash out of the cloth at the first wetting without making the seller responsible therefor.

Implied Warranties.

Some warranties are implied. Thus there is an implied warranty that provisions sold at retail to the consumer are *wholesome and fit for food, when the buyer*

relies upon the seller to make selection; but if the *buyer chooses* the particular article of food himself, there is no implied warranty. Thus if one stops hastily at a market, and says to the proprietor:—"I want you to send up five pounds of good beef for roasting," and goes away without examining the meat, and that which is sent proves unfit for consumption, there is a breach of the implied warranty.

[In most states there are statutes regulating the quality of certain provisions which may be sold, and making it a criminal offense to sell any provisions that are not fit for food.]

The same rule applies to the sale of many other articles intended for a special purpose, where the *buyer relies upon the seller* to select, and the seller *knows the purpose* for which the article is wanted.

Thus if a lady purchases a saddle horse for her own use, from a dealer on whom she depends to make the choice for her, and he gives her a horse which runs away without provocation, throws her, and kills himself, the dealer will be responsible for the loss of the horse, and perhaps for her injuries as well. But if she makes her own selection of a horse, she alone is responsible for results, unless an *express warranty* be given in so many words.

Separation and Completion Necessary.

In order to complete a sale and pass the title to goods, they must be *separated out*, if at the time of the sale they are part of a larger quantity of the same kind, so that they may be identified as the goods sold. There are a few exceptions to this rule, as in the case of grain stored in "elevators."

If the goods sold are only partially manufactured

at the time of the sale, they must be *completed* before the title can pass.

Delivery Necessary to a Sale.

In every case in order to effect a sale and pass the title *as to third parties*, the goods sold must be *delivered*; and this is most important to remember.

A contract of sale is sometimes good between the *parties themselves*, so that they cannot deny it, where instead of any actual delivery, there is a *constructive delivery*; that is, where the seller retains possession of the goods by request of the buyer, for the latter's convenience. Then if the buyer fails to come according to his promise and take them away, the seller may sue him for the price and recover it, whether he takes the goods or leaves them.

As to Creditors or Purchasers.

But *as to creditors* of one or the other party, or *as to subsequent purchasers* who know nothing of the previous sale, the contrary may be true. They may be entitled to goods which they find in the possession, and apparently the property of the seller.

It is often the case, where there is a sufficient sale to bind the parties, but the goods remain in the seller's hands, that his creditors may come and take them for his debts. For as has before been said, *possession raises a presumption of ownership*, and where there has been *no delivery*, it is strongly presumed that there was *no real sale*, but only a pretence of one to defraud creditors. Delivery is even more *essential* to enable the buyer to claim his property as against the *counter claim of a subsequent innocent buyer*, to whom the seller may have fraudulently sold it.

Seller's Lien for Purchase Money.

A seller has always a lien on the property sold, for the purchase money; that is, *a right to keep it until payment is made*. If he once actually relinquishes his right by *giving up possession, his lien ceases*, but it requires an *actual, positive delivery* to thus defeat it.

An exception to this rule is found in cases where the sale is *expressly made on credit*; for then the seller agrees to deliver the article sold, and to give the purchaser time—either definite or indefinite—within which to pay.

Stoppage in Transitu.

Even after the seller has parted with the property, and started it on its way to the buyer, if he hears that the latter has become *insolvent*, he has a right to *retake possession* of it wherever he or his agent may find it, if it has not yet reached the *actual possession* of the buyer, or that of his authorized agent. This is called, in legal phrase, the seller's "*right of stoppage in transitu*."

The manner in which sales of any kind must be effected in order to be binding, has been greatly restricted by statutory provisions generally prevailing in England and all the states, and this subject will be now considered.

CHAPTER XVIII.

STATUTES OF FRAUDS, LIMITATIONS, ETC.

Statute of Frauds and Perjuries—The Section Relating to Sales—Section Relating to Other Matters—Explanation of the Statute—Concerning Sales—Concerning Executors and Administrators—Concerning the Payment of Another's Debts—Concerning Marriage—Concerning Real Property—Concerning Contracts for a Year—Statute of Limitations—Effect of Disabilities—Collateral Security Unaffected by the Statute—Explanation of Collateral Security—The Law of Place—Test as to the Governing Law—Law of Place as to Realty and Personality—Contracts Made in One Place to be Performed Elsewhere—Law of Domicil.

Statute of Frauds.

Certain contracts *must be put in writing* to be valid. This is made necessary by a statute called "An Act for the Prevention of Frauds and Perjuries." It was originally passed in England in 1677, and has been adopted throughout our country, with some changes of terms in various states, but practically the same everywhere. There are several sections, but the fourth and the seventeenth are of greatest practical importance in ordinary transactions.

Section Relating to Sales.

The seventeenth section relates to sales, and will

therefore be first given here as naturally following the subject of the foregoing chapter.

It enacts that "no contract for the *sale of any goods, wares and merchandises, for the price of £10 sterling* or upward, shall be allowed to be good, except the buyer shall *accept part of the goods* so sold, and actually *receive* the same; or *give something in earnest* to bind the bargain; or in *part payment*; or that some *note or memorandum in writing* of the said bargain be made and *signed by the parties* to be charged by said contract, or their agents thereunto lawfully authorized."

Section Relating to Other Matters.

The fourth section enacts that "no action shall be brought whereby to charge any *executor or administrator, upon any special promise, to answer damages out of his own estate*;" [See duties of Executors and Administrators, Chapter 28] "or whereby to charge the defendant, upon any special promise, to answer for the *debt, default or miscarriage of another person*;" [See Chapter 13] "or to charge any person upon any agreement made *upon consideration of marriage*; or any contract for *sale of lands, tenements or hereditaments, or any interest in or concerning them*; or upon any agreement that is *not to be performed within the space of one year* from the making thereof; unless the agreement, upon which such action shall be brought, or some *memorandum or note* thereof, shall be *in writing, and signed by the party* to be charged therewith, or some other person thereunto by him lawfully authorized."

Explanation of the Statute.

In common English and divested of its technicali-

ties, the force of these statutory enactments is to provide that the agreement itself, *or* some memorandum of it, must be put in *writing, and signed* by the party or parties making the promise or promises therein contained, or by some one who is lawfully authorized to represent him or them, in the following cases.

Concerning Sales.

First: When a contract is made for the sale of anything coming under the broad terms, "goods, wares and merchandises," (which excludes everything *manufactured according to special orders*, or relating to real property, or to a few other matters), the price of which is £10 sterling or more (the sum varies somewhat in different states—in Massachusetts it is \$50), the contract is not binding and cannot be enforced, *unless* the buyer actually *accepts and receives the goods or some part of them*, or gives something in earnest to bind the bargain.

This last clause, however, refers to an old custom which is practically obsolete, and in brief, *one cannot hold another for more than fifty dollars on a contract of sale, which is entirely on credit, and without immediate delivery of the goods, unless there is some written agreement or memorandum.* This is a very important rule of law, and should be always borne in mind.

Concerning Executors or Administrators.

Second: When any executor or administrator, in settling up the estate of the deceased whom he represents, finds it necessary or convenient to make some contract with reference to such estate and is obliged (as is often the case) to promise that, if the contract is not satisfied out of such estate, *he himself and his own estate will be responsible.*

Concerning the Payment of Another's Debt.

Third: When any one makes any agreement to *pay the debt of another*, every guaranty that the debt of another shall be paid, is a promise by the guarantor to pay it himself if the original debtor does not do so; and it must be in writing and signed by such guarantor, in order to be binding. It is often exceedingly difficult, in many business transactions, to decide whether a promise was given by the promissor for himself *or* for another, but it is not within the scope of this work to give rules for settling technical difficulties when they arise, but rather to give directions by which to avoid them.

Remember then that, if you let your house to A, relying upon B to pay the rent for A, you must have B's promise written and signed by him.

Concerning Marriage.

Fourth: When the *consideration* for the contract is *marriage*. It will be remembered that marriage is a valid consideration for a contract, but this is true *only* when the contract is in writing, and marriage settlements should always, therefore, be very carefully drawn.

Concerning Real Property.

Fifth: When the contract, *in any way*, concerns the sale or exchange of lands or buildings. [As to Leases, see Chapter 23.]

Concerning Contracts for a Year.

Sixth: When the contract extends over the space of *a year or more*. Contracts which are to be *entirely performed within one year* from the date of making,

are binding though the contract be oral, but not those for a longer time. This is very important to remember, in many of the commonest matters of business. It is not essential that the entire contract *shall be actually performed* within the year, if it is one which was, when made, and to the understanding of the parties, *fairly capable of being completed* within the time, and intended so to be.

Statute of Limitations.

Another set of statutory provisions of very great and general importance, prevailing everywhere, though varying somewhat in the different states, is called the Statute of Limitations. Their effect is to *limit the time within which actions of various kinds must be brought*, if they are ever to be enforced at all.

How to Revive a Barred Debt.

Debts are said to be "*barred by the Statute of Limitations*"—or in popular parlance, "outlawed"—unless collected within a specified time; or unless they are "taken out of the statute"—that is, revived and made binding again—by a *new promise* of the debtor to pay, which must, in most states, be *in writing and signed* by him; or by a *part payment* of the debt, or a payment of *interest* on it, thus giving it a *new lease of life* for the entire term of the statute, which *begins to run again* after such promise or payment.

Extent of Limitations.

Sealed contracts and judgment debts (that is, when suit has been entered in court and judgment given in a certain sum for the plaintiff) usually run *twenty years* before they become barred by the statute; but

most other contractual claims are good for *six years only*. Therefore it is always well to *preserve all receipts* and other evidences of payment of debts for six years at least. [This is the common law rule, but for the statutory changes in various states, and for limitation of actions on torts, etc., see Abstracts, Title "Limitations of Actions."]

Effect of Disabilities.

When one is unable to sue by reason of *infancy, insanity, imprisonment, absence from the state, or marriage*, the Statutes of Limitations *will not run* against such a party *during the continuance of the disability*, so as to cut off his or her right of action. It will only begin to run when the disability is removed. This, however, is generally true only when the disability *existed at the time* when the debt accrued. But statutes regulate the matter in the different states, in some of which the *whole* term of limitation does *not run* after removal of the disability, but only one or two years are given within which to bring the action.

Collateral Security Not Affected.

Collateral security is not affected by the Statute of Limitations; so, though a mortgage note may be barred by the statute, the *mortgage itself* continues good.

Explanation of Collateral Security.

Lest the term "collateral security" be not fully comprehended, the explanation may be given here. One party to a contract sometimes deposits something of value with the other party, for example, certificates of shares in some stock or other personal property, to insure the performance of his agree-

ment; or he enters into some other obligation for the same purpose, for example, to secure the payment of his promissory note, the borrower of money sometimes gives to the lender a mortgage on his—the borrower's—real estate. In all such cases, the property deposited or the supplemental obligation given, is called "*collateral security*."

The Law of Place.

Before leaving the general subject of contracts, and the rules governing them, a few remarks may be made on the "law of place," as it is called, and on "domicil."

People are not always at home when they make contracts; or if they are, their homes may be in different states or countries, and the contract may be made by letters or telegraph; or the contract may be made at home, to be *executed* at another place. And as the laws in different countries and states frequently differ very widely in regard to any given point, it will be seen that important and troublesome questions may arise, as to *which* law shall govern in such cases; whether the law of the place where the contract is made; that of the home of one of the parties; that of the place where the property referred to by the contract is situated; or that of the court in which the question arises for decision.

Test as to the Governing Law.

The most important test to apply when such questions arise, and which will settle many of them and affects all, is the following:

A contract which is valid where it is made, is valid everywhere; and one which is not valid where made, is

valid nowhere. This should never be forgotten in making contracts. An important application of the rule will also be found later in considering the subject of divorce. [See Chapter 32.]

Law of Place as to Realty and Personality.

Another very general and simple rule to remember is that *all contracts which relate to land, houses or other real property, are governed by the laws of the place where the property is situated; but contracts concerning personal property by the laws of the place where they are made.*

Thus a deed of land situated in Illinois must be drawn, signed, witnessed, acknowledged, etc., exactly in accordance with the requirements of Illinois laws concerning deeds, though all the parties to the deed and the attorney who draws it, may be in another state or foreign country where the laws on the subject are entirely different.

Another Important Rule.

Another rule of obvious importance is that when a contract is made in one place, but to be performed in another, the laws of the *place of performance* must govern the execution of the contract.

Law of Domicil.

As to the matter of domicil, it is sufficient to say that *one's domicil is the place wherein he lives, and intends to live for his lifetime.*

Both are essential; he must *live in a place*, or be actually on his way to live there; and must have a genuine *intention* of permanently remaining there. Then that place is his domicil. Of course he may change his mind a month later and go elsewhere, but if at

any one time he lived in a place or was on his way to it, intending to remain there, it is his domicile *until* he both changes his mind as to remaining, and actually leaves. But it is often difficult to prove such intent of remaining, when cases arise involving the point.

One can have but *one legal domicile* at a time; though one may live much of his time in another place.

A Wife's Domicil.

A woman takes her husband's domicile on marriage, and it changes with his while the marriage lasts, *unless she intends to obtain a divorce*, for which purpose she may gain a new domicile apart from his.

A minor child has its father's domicile, or its mother's if the father be dead.

This matter of domicile is very important in affecting questions of marriage and divorce, as will be seen later. [See Chapter 32.]

CHAPTER XIX.

INSURANCE.

Nature of a Contract of Insurance—Transfer of a Policy—Who May Be Insured—Fire Insurance—Concerning Mutual Companies—Insuring to Full or Partial Value—Statement of Insured—Alterations in Insured Property—Repairs on Insured Property—Care Which Insured is Bound to Take of the Property—Life Insurance—Who May Obtain Insurance—Occupations, Health, etc.—Assignment of Policies—Policies on the Lives of Women.

Nature of a Contract of Insurance.

A contract of insurance binds one party, called *the insurer*, to make good to the other party, *the insured*, any loss or injury, or some proportionate part of any loss or injury, which the latter may suffer in regard to *certain specified property or interests*, by means of *certain specified perils*.

This contract, like any other, must be supported by a consideration, which is the sum of money paid to the insurer by the insured, or promised to be paid by him (as in the case of mutual companies, to be explained later), this sum being called the *premium*. The document itself, when formally made out, is called the *policy of insurance*.

If no policy has actually been drawn up before the

calamity occurs by which loss is sustained, but an *agreement* has been made with an agent of the company, which has been entered and signed in his ordinary proposal-book; or if an agreement has been made by letter, the letter of the party who accepts the proposal having been *mailed*; the contract of insurance is as complete and binding as though the formal policy had been drawn up, signed and delivered.

Transfer of a Policy.

A policy of insurance may be assigned or transferred to another, but not unless *the insurer assents* to the transfer.

Who May be Insured.

No one can obtain an insurance on any property who has not *himself, at the time, some pecuniary interest* in the property; and it is that interest which is insured. On the other hand, *any one who has any legal interest whatever* in property, may insure that interest. Thus both mortgagor and mortgagee may insure the same property.

Marine insurance, which secures property and interests in property, at sea, will not be considered here.

Fire Insurance.

Fire insurance indemnifies against loss by fire of dwelling-houses or other buildings, or of personal property contained therein.

There are stock companies and mutual companies which give such insurance. A *stock company* is composed of certain persons who furnish all the capital, take all the risks and share all the dividends. A *mutual company* is composed of the persons whose property or interests are insured, they themselves running

the risks, and profiting by the dividends. The most reliable mutual companies have also a capital stock as a permanent guaranty fund, a certain part of the profits going as dividends upon this stock, and the rest being divided among the members.

The expense of insuring in a mutual company is usually much less than in a regular stock company, for only a small portion of the premium is demanded in cash, and the rest, guaranteed by a premium note or bond given by the insured, cannot be demanded from him except in so far as the actual losses sustained by members of the company may require. It is only by extensive conflagrations that the full amount of these bonds or notes is likely to be called in, and it often happens that instead of such assessments being made upon the members, dividends are paid.

Concerning Mutual Companies.

Thus previous to the great Boston fire, large numbers of people owning property in that city had been insured for many years in mutual companies, from which they had received dividends annually, so flourishing were these concerns. But when the disaster occurred, immense losses of the property thus insured took place, and instead of dividends being declared, heavy assessments were called for, in order to enable the company to meet its obligations. As the members of the company had guaranteed their payment of such assessment in case of necessity, by depositing notes or bonds when they first entered the company, they could not resist the demand, except in those cases where they were so entirely ruined by the fire or other misfortune as to have nothing with which to meet it. This was the case in many instances how-

ever, their bondsmen also being ruined, and the result was that some apparently very solid companies went completely to pieces. Others survived the shock, proving to the public their reliability by the fact that many of their members found, after calculating and off-setting the dividends which they had received in years past, against the assessment which they were called on to pay in this time of great calamity, that it had cost them no more to insure in the mutual company than it would have done had they insured in a stock company.

Insuring to Full or Partial Value.

Mutual companies generally insure property only to a certain proportion of its value, usually from one-half to three-fourths of its assessed value, while stock companies will generally insure property more nearly to its full worth. Most companies will not permit owners of property to insure it for more than its value, by taking out premiums in two or more companies; for could this be done, too great temptation would be offered to double and treble the insurance on property, and then burn it and secure much more money than it was worth. Policies of insurance generally provide against such danger by requiring that any insurance already effected on the property shall be stated by the insured when he takes out another insurance on the same property, and if he fails to do so, the second policy shall be void. Companies often consent that property shall also be insured by other companies, if the fact is properly stated to them, but the condition is then generally made, that in case of loss, each company shall only pay a *ratable proportion* of such loss, so that the insurer cannot recover in any case, more than the value of his property.

Statement of Insured.

Each insurance company prescribes a certain formula of questions which must be *exactly and correctly replied to*, generally in writing, by the party who applies for an insurance; and if he *wilfully fails* to make correct replies to all such questions, his policy is void, and he can recover nothing if his property is destroyed. It is also common to require from the insured a warranty, by which he *warrants the correctness of his replies* to the questions and of all his statements concerning the property, and in such case, if he makes an incorrect answer *innocently*, such a mistaken answer or statement will make his policy valueless, because he has signed an *absolute warranty* that his statements are all correct. It is not necessary that the matter concerning which this wrong statement was made should have any connection with the *cause of the destruction* of the property. Thus if an insured party makes and warrants an innocent error in his statement with regard to the condition of the chimneys of his house, and then the house is destroyed by an incendiary, the policy is valueless and he can recover nothing from the company. The greatest care should always be observed, therefore, in filling out blanks in an application for insurance.

Alterations in Insured Property.

If the insured proposes to make any alterations in his property, by which the danger of fire is *temporarily increased*, or in fact *any material alteration* whatever, it is always best to ask the consent of the insurer to such alteration. It will usually be given, and one may thus save the necessity of a lawsuit to obtain the insurance, if any loss occurs during the alterations,

whether on account thereof or not; and if consent is not given, the insurer is quite as well off as though he had not asked it.

It depends on circumstances whether or not a policy is vitiated by such alterations. But if a *permanent alteration* is made, which really *does increase the danger of fire*, the policy is at once made null and void.

Repairs on Insured Property.

Policies frequently give to the insured the right of putting ordinary repairs on buildings, without getting special permission from the company. And on the other hand, it is the duty of the insured to keep the property in *such repair that the danger of fire shall not be increased*; and if he grossly fails to do this, knowing the danger, he may make his policy valueless by such negligence.

It is only by *gross or extreme negligence*, however, that one can vacate his insurance; one is not bound to take especial care.

Care of Insured Property.

Some companies also require that the insured shall use all possible diligence to preserve his property in case of a fire. And even in absence of this special requirement, the insured must use *such care as is usual* in such times of excitement. If reasonable care be thus used, the company is liable, not only if the insured property is actually burned, but also if it is destroyed or injured by the water used to extinguish a fire; or by removal from the immediate danger of fire; or by the blowing up of buildings to arrest the progress of a fire.

An explosion by gunpowder is a loss by fire, but

an explosion by steam, or an injury caused by lightning is not, unless an actual ignition follows the stroke, or unless the policy expressly insures against lightning.

Life Insurance.

Life insurance is effected similarly to fire insurance, by an application containing replies to certain questions. An examination by a physician, usually appointed by the company, is also generally required, and he, too, must reply to certain queries concerning the health and condition of the applicant. There is the same necessity that all answers and all statements shall be *correctly* given, especially if accompanied by a warranty of their correctness.

Who May Obtain Insurance.

A life insurance may be obtained by *the party himself* whose life is insured, payable to his personal representatives, or to any individual or individuals whom he may name. He then pays the premium on such a policy, either in bulk, or more usually, in stated sums at stated times, or some one else may pay it for him. If it is regularly paid by any one it is sufficient, and the policy remains good.

An insurance may also be effected on the life of a *third person*; thus a company may insure the life of A to B and his representatives; in this case, if the premium is paid up regularly by B or any one else for him, on the death of A the sum insured is paid to B; or if B is dead, to B's representative. But to obtain such an insurance, B must have *some pecuniary interest* in the life of A; that is, he or she must be *dependent* on A for support or for comfort, or must be a *creditor* of A.

A life insurance may be for a stated period, or indefinitely. If for one year only, the premium is usually paid in bulk and in advance. Where the insurance is for a stated period, it is important to prove that the death took place within that time, if the insurance is to be claimed.

Occupations, Health, Etc.

Certain trades and occupations are considered *extra hazardous*, and are either prohibited, or require an extra premium. So of persons who are not in good health, or who have hereditary disease.

Unless there is an understanding to the contrary, a policy is vitiated by the suicide of the insured, if he was in his right mind and responsible for his act; otherwise probably not.

Assignment of Policies.

Policies of life insurance may be, and frequently are *assigned to others*, who may then claim the insurance upon the death of the insured. The policy should be transferred to the possession of the assignee, unless a formal deed of assignment is drawn up, signed and delivered, when a transfer is unnecessary. It has even been held that a simple transfer of the policy, if intended as an assignment, is sufficient to work one, without any written agreement whatever.

An assignment is often made *by a debtor to his creditor*; indeed insurances are frequently effected by debtors on their lives for the express purpose of giving the policy to their creditors as a further security, or else the policy is made out in the first instance to the creditor as beneficiary.

Thus A owes money to B, and B is willing to give

A time in which to pay up the debt slowly, but fears that if A should die meanwhile, he would lose the money or a part of it, so A insures his life for the benefit of B, for a sum upon which the parties agree, thereby securing payment even in case of his death.

Of course, an assignment cannot be given without the consent of the company, unless the general rules of the company or the terms of the policy countenance such assignments, which is often the case.

Policies on the Lives of Women.

Some companies *will not insure the lives of women*, considering the risk extra hazardous. Other companies will issue such policies, but charge an extra percentage (usually from one-half of one per cent. to one per cent. more), on the lives of women below a certain age, usually about forty years. Some companies make no distinction between the sexes.

The subject of insurance has not been covered in all its bearings by the foregoing statements; indeed, there are some other kinds of insurance, that have not been mentioned, as that against accidents; but the general leading principles here given apply to all cases, and it does not seem necessary to consider the subject at greater length.

CHAPTER XX.

REAL PROPERTY.

Movables and Immovables—Other Terms in Use—An Estate in Lands—The Estate in Fee Simple—Alienation of an Estate in Lands—Legal Conditions in Restraint of Alienation—Restrictions Imposed by Law on Alienation—Essentials of a Deed—Word “Heirs” in Wills and in Deeds—The Estate in Fee Tail—The Estate for the Life of the Grantee—The Estate for Life of Another—Features of an Estate for Life—Tenant’s Right to Emblements, etc—Waste.

Movables and Immovables.

The earliest and most natural division of property was into movables and immovables. Movables were considered in ancient times to be less valuable than were immovables, because enemies might carry away or destroy the former, while of the latter they could only take possession, and might be driven out in their turn.

Immovables consist of land and buildings erected upon it, and the term *real property* is the one most used to designate them, in distinction from the term *personal property*, which is used to cover most other kinds of possessions.

Other Terms in Use.

Other terms were anciently applied to these two classes of property, which have remained in use more or less. The expression *lands, tenements and hereditaments*, is often seen in law books, and sometimes in deeds and other instruments. They are interchangeable terms for immovables; tenements meaning things capable of being held, and hereditaments things capable of being inherited. In early times, this last class of immovables was the only property thus susceptible of being absolutely owned, and of remaining in the family by descent.

The term *goods and chattels* has also been used from time almost immemorial, to designate personal property or movables.

An Estate in Land.

The property or interest which one may have in land is called an *estate*. Thus one who *owns* land absolutely has an *estate in fee simple*; one who holds it for his life only has an *estate for life*; a lessee has an *estate for years*; and one who hires without a lease has an *estate at will*. Any interest whatever in land is an estate therein.

When land is sold, it is transferred by a deed of conveyance, and is generally said to be *conveyed*; so when one speaks of a conveyance of property, it usually means *of real property*. He who conveys is the *grantor*; he to whom the conveyance is made is the *grantee*.

The word "land," as used in law, *includes all buildings and trees standing on the land, and all mines and minerals beneath it*; for the ownership of land has

always been held to extend indefinitely upward into the air and down into the earth.

Thus actions of trespass have been brought against aeronauts for passing over the plaintiff's land in a balloon. Actions have also been recently brought against telephone companies by owners of houses on the roofs of which telephone wires have been fastened without the consent of the owners; though in this latter class of cases, there is of course stronger ground of action than in the former, inasmuch as the trespass includes an actual contact with the buildings of the plaintiff.

If it be so desired, the surface land, and mines beneath it, may be separately conveyed to different purchasers, if thus expressed in the deed.

The Estate in Fee Simple.

When one is the absolute owner of land, he has what is called in law *an estate in fee simple*. This is the *highest and most complete estate* which any one can have in land. (The word "simple" is only used to distinguish the estate from that in fee tail, and is often omitted, the term estate in fee meaning one in fee simple.) An estate in fee simple *descends to all relations* according to the usual rules of descent, which are fixed in each state by statute. [See Abstracts, Title "Descent and Distribution of Property."]

Alienation of an Estate.

Any estate may be *entirely alienated by its owner*; that is, he may sell, or give, or devise by will, the entire title to any one else.

In olden times, the policy of the law in England was precisely contrary to that of modern times in

this respect, and alienation of land was restricted or altogether prohibited. Now, however, if an estate be given to a person by deed or by will, on the condition that he *shall not part with it* to any one else, *such a condition is illegal and therefore void*; and he takes the estate absolutely, as if no condition had been imposed. [See Conditions, Chapter 2.] If this were not so, the usual course of business would be greatly impeded, for it would never be safe to trust any one, even if known to be possessed of houses and lands, without first examining the records to find out whether he held the property under a condition restraining alienation. It would also create a strong barrier between the rich and the poor classes, making it possible to confine the proprietorship of land in a few wealthy families, and almost precluding the poor from gaining any right therein.

Legal Conditions in Restraint of Alienation.

A condition restraining the alienation of property for a *reasonable time*, or prohibiting its alienation to a *particular person*, may be perfectly legal.

When it is desirable to give to a certain person the *income of land*, but not to give him the power of disposing of the land itself, it is possible to attain this object, notwithstanding the policy of the law against restrictions upon alienation, by giving the title to the land to a third person, *as trustee*, who shall hold it and *pay over the income* to the person who is to benefit by the property.

This has been done very extensively for many years, in favor of married women, or women who may be married at some future time, in order to secure to them the benefit of the property, instead of

having it go to their husbands, as would be the case, at common law, if the title to land was vested in the women themselves. [See Trustees, Chapter 29.]

Restrictions Imposed by Law.

The *law itself* still places some restrictions on this right of alienation. Thus, an *infant cannot convey* his real property till he is twenty-one years old. An *idiot or lunatic* cannot give a good conveyance during the continuance of such disability, nor can a *married woman* in states where the common law rule prevails.

In nearly all states some restriction is still placed on the conveyance of real estate by a *husband or wife*, in favor of the other party to the marital union. Of such effect are the general laws concerning *estates by curtesy and dower*, which will be considered later. [See Abstracts, Title "Curtesy and Dower," also Chapter 21.]

The rules of law for the *prevention of "perpetuities"*—that is, to prevent an owner of property from tying it up far into the future, will also be considered later. [See Chapter 27.]

Essentials of a Deed.

In order to transfer the absolute title to real property, that is, *to give a fee simple to another by deed*, it is essential that certain expressions be used in the deed. The word "*heirs*" is the only very important word, but this is *so important* that it must never, by any accident, be omitted; for if a deed purporting to convey the entire title, omits that word and merely says, "Know all men by these presents that I, A B," etc., "do hereby give, grant, bargain, sell and convey unto C D, a certain parcel of land situate," etc., this deed will

only have the effect of conveying an estate to C D *for the life* of C D, and it will go back at C D's death, to the grantor A B or his heirs. [See Appendix for blank form of warranty deed.]

In order to convey the entire right of ownership in the property, the deed must contain the words, "*do hereby give, grant, bargain, sell and convey unto C D, his heirs and assigns,*" etc. The word "assigns" is of little value, but the exact expression, "and heirs" is so imperative that not even the word "heir," or the expression "to one *or* his heirs," can supply the place of "*to one and his heirs,*" by which words only can the entire estate be conveyed. (To this rule, as to many others which are laid down in this work, there are a few apparent exceptions, but not of great importance, while the rules themselves should never be forgotten.)

Rule Not So Strict Concerning Wills.

This rule does not apply with equal force to *wills*. In deeds, the wording *must be according to the strict rules of law*, but much more latitude is given to the phraseology of wills, which it is supposed many people write for themselves; and as, having passed out of this life, they cannot be called on to explain their meaning, the courts use the utmost care to get at the real intention of the testator, and if the wording of the entire will shows that it was his intention to give an estate in fee simple to a certain person, he will take such an estate, even though the word "heirs" was entirely omitted.

In many states indeed, statutes have been passed declaring that when an estate in land is given by a will, however it may be expressed, the party to whom it is given shall *take the entire estate which the testator*

had, unless he expressly limits or qualifies it by *stating* that a *lesser* estate shall be given. This is the law in Massachusetts, New York, Illinois and other states.

Estate in Fee Tail.

Another kind of estate in land, formerly of great importance, has now become of so little value that it is not necessary to explain its subtleties here. This is the *estate in fee tail*, which remained in the possession of the grantee's family only so long as he had direct descendants of either sex, or of the sex to which the estate may have been limited.

It may be well to mention however, that it is *still possible* to create such an estate in some states, as for instance in Massachusetts; though it is also possible by a very simple process, to *change* it to one in fee simple, thus "barring the entail," as it is called.

It occasionally happens that a man who makes his own will, unconsciously uses technical words which have the effect of limiting the estate which he intends to give, thereby making it a very different one from that which he supposed he is giving. For though the courts try to ascertain the intention of the testator as expressed by the entire will, and to distribute his property accordingly, any change from the wording of the will is made by the court only when his *intention*—as expressed by such wording—*seems doubtful*; and if he *deliberately uses words which have a settled meaning*, and nowhere contradicts their effect, no doubt can be raised concerning his intention, for he must be held to have understood and intended what he was doing when he used them.

The technical words necessary to create an estate tail are "*heirs of his body*." So if a man in Massachu-

setts should make his will, giving his real property "*to my son John and the heirs of his body*," and dies, and his son John dies soon after, *without having taken the necessary legal steps to bar the entail*, the entire property would go, at the death of John, *to his oldest son*, none of his other children receiving any portion thereof, for primogeniture is an essential feature of estates tail, unless changed by statute. Several cases of the kind have occurred in Massachusetts within the past century.

Estate for Life of the Grantee.

The third estate in importance is an *estate for the life of the grantee*. To create such an estate the wording of the deed must be such that it is *absolutely capable of lasting during the grantee's life*, even though it may not be explicitly stated that it is to last for his life. Thus an estate given to a woman so long as she remains a widow, is an estate for life, because it is perfectly possible that she may never marry again. Should she do so however, the estate will *at once cease*, and the possession of it will revert (i. e. go back), to the grantor, or will go to the person who was named to take it "in remainder" in case her estate should be terminated by her marriage.

Estate for Life of Another.

An estate of less value may be given *for the life of a third person*; thus A may give an estate to B, to continue during the life of C.

One who has an estate for the life either of himself or another, *can convey that estate only* for the time that may elapse before he (or the other) shall die.

Features of an Estate for Life.

A tenant for life (as one possessed of a life estate is called) *cannot generally claim any compensation for repairs or improvements* which he may put upon the estate; though it has been held that if a building is not in tenantable condition when he first comes into possession of it, he may charge the expense of *making it tenantable* upon the party who is to come into ultimate possession.

Ordinary taxes are usually paid by the tenant for life. When there are incumbrances upon the estate, as a mortgage for instance, the life tenant must usually pay the interest, and sometimes also a part of the principal proportioned to the value of his interest in the estate, said interest to be estimated by an ingenious arrangement called "life tables," the same system as that used in computing the premium to be paid for life insurance.

The Right to Emblements, etc.

A tenant for life may cut such *wood* from the premises as he needs for *actual present use as fuel, or for repairs upon the estate*, and no more.

He has also a right to *emblements*—that is, the crops raised on the land—to compensate him for tilling the soil. The grass and other natural products of the land, other than trees, are his during his life only; but the *annual crops which he has sown* belong to his heirs or personal representatives, even after his death.

This right to emblements pertains also to a tenant of land *by a lease* as well as for life; and if a landlord *wrongfully ejects the tenant* before the lease ends, the lessee may enter upon the land and reap the crops which he had sown, without being guilty of trespass.

But if the *lease expires* before the crops are ready for the harvesting, the tenant loses them.

Waste.

For a tenant to cut down trees when *not* needed for fuel or repairs; or to *injure* the land or buildings (either by acts or by negligence) beyond the mere wear and tear resulting from careful usage, is called *waste*; and a tenant, either for life or for years, may be held liable in damages *for any waste* which he causes or permits upon the estate.

All these particulars concerning the nature of an estate for life, are of special importance to women, because the estates by curtesy and dower are estates for life. [See following Chapter.]

CHAPTER XXI.

REAL PROPERTY, CONTINUED.

Estates for Life Continued—The Estate by Curtesy—The Estate of Dower—The Property to which Dower attaches—Requisites of Dower—Dower in Mortgaged Property and in Equitable Estates—How Dower May be Lost—Wife's Deed or Mortgage of Release—Dower Cannot be Barred by Contract Between Husband and Wife after Marriage—May be Barred by Contract Before Marriage—Widow May Elect Between Dower and Provision of Husband's Will—Dower Must be Set Out Promptly—How Dower Should be Set Out—Dower Attaches to Property Conveyed without Wife's Release—When Value of Property Has Increased After Conveyance.

Estate by Curtesy.

The estate by curtesy is the right which a husband may have, at common law, after his wife's death, to remain in possession for life, of all real property of which she was possessed in fee simple during the marriage.

To give him this right, there must have been a legitimate child born alive to them. The land and buildings then become his, for his lifetime, immediately upon his wife's death; and she cannot, by deed or by will, deprive him thereof, his signature being requisite to any deed of her land, by which to convey a

perfect title to the purchaser. Without his signature the purchaser takes the title *subject to the husband's right of curtesy*.

It is said that this right originally arose because the father was liable for the support of the children, but whether the children live or die, and whether he supports them or not, his estate by curtesy is equally sure, and cannot be taken from him.

If the parties be divorced the right of curtesy ceases in most states. [See Abstracts, Title "Divorce."]

Curtesy has been abolished in some states, and changed in others. [See Abstracts, Title "Curtesy and Dower."]

Dower.

Dower is the oldest and most universal provision made for a widow from the property of her deceased husband. Like curtesy, it is an ancient common law right, it being said, centuries ago, that "the law favor-eth three things—life, liberty, dower."

The right of dower gives to a widow *the possession, for her lifetime, of one-third of all the real property of which her husband was possessed in fee simple during the marriage*, provided that she has not in any lawful way, released her claim therein.

The Property to Which Dower Attaches.

If he has merely taken a *lease* of the property for a term of years, however long the term and however little of it may have expired at his death, the widow takes no dower, unless by statute, as in Massachusetts, where a law specially provides that if the lease be for *a hundred years or more, and fifty years of the term remain unexpired* at the husband's death, the wife

shall take dower in it, and the heirs take the other two-thirds, just as they would do if it were an estate in fee simple.

In Connecticut, on the contrary, it has been held that an estate for nine hundred and ninety-nine years, of which but a few had expired, gave the widow no dower, and where this rule obtains, advantage is often taken of it to avoid the wife's right in her husband's property, a lease being given for a great number of years instead of a deed.

It must be remembered that the right of dower attaches *only* to such real property as the husband has *actual possession of*, or to which he has the *right of actual, immediate possession, during the marriage*. Thus A and B are husband and wife. The husband, A, is to come into possession of certain land on the death of a third person, C, who has it for his life. Now if C dies before A, then A enters into actual possession, and at A's death, B takes her dower in it. But if A dies before C, though but a day earlier, A has never had actual possession, nor the right thereto, and B takes no dower therein.

Requisites of Dower.

The widow's dower attaches whether she has had any children or not, the only requisites being a *lawful marriage, possession or right to possession of the property by the husband during the marriage, and the death of the husband*.

As has been already stated [See Chapter 9], a widow takes *no dower* in property purchased by her husband and others as *business partners*, for partnership purposes and with partnership money, unless property remains after the settlement of partnership

debts. In such portion of it as may thus remain, she takes her dower in most states, though not in all.

Mortgaged Property and Equitable Estates.

If a husband loans money and takes a *mortgage on real property*, his wife has no right to dower therein until after the mortgage is *foreclosed*. In some cases, however, she can *force foreclosure*, or some settlement in lieu thereof.

When a husband is not in actual possession of land because it has been placed in the hands of *trustees for his benefit*, he receiving the income therefrom, the laws differ in different states, some giving the widow dower in this "equitable estate" (as his interest is called), and some not. In Massachusetts, the rule is that of the common law, that a widow does *not* take dower in such a case; though she may take it in the somewhat similar case where there has been a contract made by her husband and another, that the latter shall convey land to the husband, who, having given the required consideration on his part, dies before the conveyance takes place. Then the widow may compel the conveyance, so that she may take her dower therein.

So in Maine, a widow cannot take dower in an equitable estate. But in Maryland, New York, Kentucky, North Carolina, Iowa and Tennessee, she may do so, if her husband still holds the estate at his death. In Pennsylvania and Illinois the same rule obtains with slight variations, giving dower in such equitable estates.

In Massachusetts, Maine and New Hampshire, a widow takes no dower in *wild and uncultivated wood lands*, unless for the mere purpose of furnishing wood

for *fuel and repairs* on farm land of which she is dowable. In most other states, widows may take dower in wild lands.

The widow takes the *annual crops* growing upon her dower land at her husband's decease.

How Dower May Be Lost.

Dower is generally lost if the parties are divorced, but in some states the right remains if the divorce is given on account of the husband's fault. [See Abstracts, Title "Divorce."]

A wife may always bar (i. e., deprive herself of) her dower by *joining with her husband in a deed* of the land (or a mortgage which is subsequently foreclosed), thus voluntarily *relinquishing all present and future claim* which she might have to the estate. She must be twenty-one years of age to do this, except in a few states, as in Maine, where a wife of any age may release her dower.

Conveyances in Fraud of Dower or Curtesy.

It has been held in some cases that when a man *seeretty conveys his real property in trust* to some party just before marriage, intending to enjoy the interests and profits himself during his life, but to *defraud his wife of her dower* therein, such a conveyance will be set aside by a court of equity on the husband's death, and dower given to the widow. In states where, as already mentioned, the widow is dowable of equitable estates, such a conveyance would have no effect, and she would take her dower without special application to the court therefor.

In the same way, a conveyance by a woman of her property just before marriage, in fraud of her pros-

pective husband's rights therein, may be set aside. This is true, even though he did not know, at marriage, that she had any property.

Post Nuptial Contracts Against Dower.

No contract between husband and wife *after marriage*, either directly or through the intervention of a third party, can operate to bar her right to dower. However strong such an agreement may be, it is *entirely void* and inoperative, unless the agreement distinctly sets forth that certain other property is to go to the wife *in lieu* of her dower right; and even in the latter case, *the wife is not bound* by her agreement to take this provision, but may *elect*, at her husband's death, whether she will do so, or cast it aside and claim her dower. This rule was made for the protection of women who were supposed to be too much under the influence or dominion of their husbands to be able to defend their own real interests, and also too ignorant of the law, and their future possible needs, to understand what they ought to do. Therefore the law would not allow them to sign away their dower right beyond recovery, after marriage had put them under the control of their husbands.

Ante-Nuptial Contracts Against Dower.

Dower *may be barred* or lost by a contract to this effect entered into by the parties *before marriage*, whereby a certain settlement is made upon the bride, expressly stated to be *in lieu of dower*. It will then be binding upon her, and she cannot, at any future time, disclaim it. This settlement in lieu of dower is called a *Jointure*. These ante-nuptial agreements are exceedingly common in England, where it is thought

desirable that the land belonging to a family shall not be cut up and distributed away; but in this country they are comparatively rare.

A husband may, if he so desire, make a certain provision for his wife *by his will*, stating it to be in lieu of dower, and in such case, as in that of a post-nuptial contract, *she may choose*, after his death, whether she will accept this provision, or take her dower. In some cases where the will *does not expressly state* that the provision is in lieu of dower, she may take both. In many states however, there are statutes on the subject, providing that unless it is *apparent by the will that the husband intended* his widow to have both her dower and the provision which he names for her, she can take but one, and must make her election between them.

Dower Must be Set Out Promptly.

A widow is entitled to be put in possession of her dower immediately upon the death of her husband, but some delay is usually and unavoidably necessary.

To obviate the discomforts of such delay, the law from very ancient times gave to the widow the right to remain in "the principal mansion-house of her husband" for forty days after his death, and to be maintained therein out of his personal estate, provided that she did not marry again within the time. This was called her "quarantine," and the custom still obtains in most of our states, though with changes, more or less, by statutory provisions.

Instead of taking her regular dower—that is, a life interest in one-third of her husband's real property—the heirs and the widow may agree together that she shall take *other property in lieu thereof*. To bind

her to this agreement however, so that she may not retract it and demand her legal dower, it must be signed and sealed by her.

If dower is not properly set out to the widow within a reasonable time, she may take legal steps to secure it. There should be no unnecessary delay; she must act promptly in the matter.

How Dower Should be Set Out.

Dower should be set out "by metes and bounds" where it is practicable; that is, a *distinct and separate division* of the lands and the buildings owned by the husband should be made, in order that the widow's portion may be ascertained. Where there is but one house, some arrangement is often made giving to the widow certain rooms, with the privilege of using the halls, stairways, etc., in common with the other tenants; or something else may be given her instead, as already stated, if she consents thereto.

Dower Attaches to Property Conveyed without Wife's Release.

It must be remembered that the widow's right of dower *always attaches itself to all realty of which her husband was possessed during the marriage*; (except in a few states where, by statute, it attaches only to property of which he *died* possessed, and where therefore, a wife need not join in her husband's conveyance of his realty, since she has no right of dower in any part of it until his death.) [See Abstracts, Title "Curtesy and Divorce."]

But the regular common law dower which generally prevails where the right is recognized at all, *becomes an inchoate right immediately upon the marriage*

as regards realty then in the husband's possession; and immediately upon the *acquisition of the title* to realty, or the right thereto, after marriage; and that he may give a *good deed of any part of his realty, the wife must sign a formal release of her dower therein*. If then, by representing himself to be a single man, or otherwise, he disposes of any such property without her release, *she may enforce her claim when he dies, against any one who may then be the owner of such property*, who may be compelled to yield up to her one-third thereof for her lifetime.

Where Value of Property Has Increased.

If the property has increased in value *by the passage of time or by any other natural causes*, the general rule is that she profits thereby, and takes *one-third of the property as it stands* at date of assignment to her. But if its value has been increased *by improvements*—that is, by labor or money expended or buildings erected after it passed out of the husband's hands—the general rule in this country is that she will *not* profit thereby, but can take only one-third of the property as it would naturally be valued exclusive of such additions or improvements.

The rules which have been set forth in the foregoing pages concerning curtesy and dower are, it must be remembered, the common law doctrines, which obtain in all states where they have not been set aside, superseded, or altered by statutory provisions. This has been done to a greater or less extent in many states, several of which have entirely abolished both curtesy and dower, substituting therefor other rights in marital property. [See Abstracts, Title "Curtesy and Dower."]

CHAPTER XXII.

REAL PROPERTY, CONTINUED.

Estates by Marriage—Effect of Marriage upon a Woman's Real Property at Common Law—Married Woman's Equitable Estate—Married Woman's Statutory Estate—Conveyances Between Husband and Wife—Estate in Entirety—Estate in Common—Partition of Estates in Common—Rights of Homestead.

Effect of Marriage upon a Woman's Property.

At common law, when a woman married, her husband had *immediate and entire control of her real property*; all the rents and profits therefrom became his absolutely; and she could not sell any part of it without his consent, and his joint deed. Their possession was said to be a joint one.

Married Woman's Equitable Estate.

This rule of law was often avoided by giving property to a married woman, not directly, but to be held by trustees for her *sole and separate use*. Women about to marry often put their property thus in trust for themselves, and their prospective husbands often settled property upon them in the same way.

To strengthen their claim and add to their pecuniary independence, the document by which the father,

friend, prospective husband, or woman herself thus gave property to trustees for her use, frequently stipulated that she should have *certain rights and powers* in regard to this equitable estate, beyond those which married women could have at common law, and which could be enforced in, and recognized by courts of equity only.

For example, she might at any time direct that such property be sold and the proceeds paid over to her; or she might contract debts with reference to such property and binding upon it; or she might, by an instrument drawn up with the same formalities as a will, appoint parties to whom the property should go on her death. Thus, although a married woman could not at common law make a will of her realty, the same result could be effected.

This interest in property constitutes the *equitable separate estate* which in many states is still the only separate estate which the law recognizes as belonging to a married woman, and to which the abstracts of the statutes on the subject in such states refer. [See Abstracts, Title "Married Women."]

Married Woman's Statutory Estate.

In many states now, by statute, a woman may *hold all her realty independently, and sell it without her husband's consent*; except that, in most states where he has the right of curtesy, he must join with her in a deed, in relinquishment of that right. If he does not do so, and outlives his wife (a child having been born to them alive during the marriage), the person to whom she sold the estate would have to give it up to the husband on his wife's death, to hold during his life.

This is the condition of the law in Massachusetts, where a wife *has full control of all her property, personal and real, and may dispose of it as she thinks fit, except that she cannot deprive her husband of his right of curtesy in her real property, or his statutory rights.*

Conveyances Between Husband and Wife.

At common law, husband and wife *could not make any binding contract* with each other, and therefore one *could not convey his or her real property directly to the other.* This is still the law in the majority of states, though the contrary is true in others.

It may be evaded, however, when desirable, by transferring the property through a third person. Thus A, the husband, conveys a house or land to B, who in turn conveys it to C, the wife of A. The two deeds are made out, and signed simultaneously by the parties interested, so that no danger is incurred of B's attempting to retain the property thus conveyed to him.

If a husband erects buildings, or otherwise makes improvements on his wife's land, such buildings and improvements immediately become hers, as they would if erected by a stranger; for land carries all with it that is *attached to it.*

Estate in Entirety.

If real property be conveyed, by deed or by will, *to a husband and wife*, they hold the property *in entirety*; that is, both have an *equal right* to it and to the proceeds, and *neither can sell it*, or any part of it, unless the other consents. Upon the death of either husband or wife, *the survivor comes into entire possession.* In many states there is no such estate in entirety.

Estate in Common.

Any two or more persons may have an estate in common. Husband and wife may hold property thus, but if it be conveyed to them after marriage, whether by deed or by will, it must be *specially stated* that they are to hold it in common, else they would take it in entirety. Or they may have been "tenants in common" before marriage, in which case they remain such afterward.

When two or more people hold an estate in common—they being tenants in common—each has a *distinct and separate title to the estate*, and though the share owned by each may be very unequal, and they may have come into ownership at different times and by different ways, still the right of possession and occupancy of the whole estate is held by all alike, and *no one tenant can eject another from any portion of the estate*, so long as they remain tenants in common.

Partition.

But any one of them may *terminate the common possession* at will, and compel a "partition" of the property, whereby he will receive such a portion as the law decides should be his, which he may then hold independently. In cases where a division of the property would be impracticable, a sale and division of the proceeds will be ordered by the court.

Tenants in entirety *cannot* compel partition.

Tenancies in common are very frequent, and may be in fee simple or for life or for years. If two persons—not partners—buy a house together, they hold it in common. If by will a house is left to two sisters, they are tenants in common.

Each tenant has *all the rights* in respect to the prop-

erty which he would have if he were the sole owner, *except that of sole possession*. Separate *curtesy and dower* is given to the widower or widow of each tenant in common.

Homestead Estates.

In most of our states, there are statutes establishing and regulating the "rights of homestead." These are usually considered as estates for life. They are entirely of statutory origin, there being no such estate or right at common law.

The general policy under which these laws have been instituted, has been *to secure to a householder and his family the benefit of a home, beyond the reach of legal process on the part of creditors*, and to guard this more effectually, in most of the states no release or alienation of an estate thus secured is of any avail, unless *assented to by the wife* of such householder, through whom it is sought to guard and protect the interests of their minor children.

The homestead is generally *liable for taxes*; for the *purchase-money* of the property itself; and for any *improvements or other work* done upon it by mechanics, laborers or others; and it is sometimes also liable for *wages of servants*. [See Abstracts, Title "Exemptions."]

In many states, it must be *publicly recorded as a homestead*, according to certain statutory provisions, in order to secure exemption from ordinary debt.

One who has *an estate for life* of any kind (except the *quasi homestead estate*), may sell or transfer the same, by giving a deed which shall pass *all his "right, title and interest in and to"* the property. [See Appendix for blank form of Quit Claim Deed.]

CHAPTER XXIII.

REAL PROPERTY, CONTINUED.

Estates for Years—Essentials of a Valid Lease—Statutory Regulations in Several States—Liability of Lessee—Assignment of a Lease—Covenants in Leases—Conditions in Leases—Waiver of a Condition—Distinction between Underletting and Assignment—Entry on Non-Payment of Rent—Ignorance of Terms of a Lease no Excuse for Breaking Them—Tenant Must Make Repairs if Lease does not Stipulate Otherwise—Liability for Rent—Liability for Injuries Resulting from Lack of Repairs etc.—Surrender of a Lease.

Leases.

Next in importance to estates for life are *estates for years*. An estate for years is created by a contract called *a lease*; and a lease for a single year or for a month comes equally under the definition, and is governed by all the rules regulating estates for years.

The *lessee* of such an estate—that is, the person who hires the property under a lease from the lessor—has the *entire right of possession* during the term of his lease; also of the *profits, crops*, etc.

The parties to a lease are commonly called *landlord and tenant*, or *lessor and lessee*.

Essentials of a Valid Lease.

A lease is valid in most states *only when given in writing, signed by the parties*. [See Appendix for blank form of Lease.] In some states still further formalities are necessary, but in a few, an oral lease for less than a year is good.

Statutory Regulations in Several States.

In Massachusetts, every lease must be in writing, but a simple written lease is sufficient, if for a shorter period of time than seven years; *if for seven years or more*, a deed of lease must be made out, signed and sealed by the parties; and it must also be recorded to be good *against third parties*—that is, so that the lessee may retain possession of the property throughout the entire term, in opposition to the claim of any other party to whom the landlord might give a subsequent lease, or against the landlord's creditors.

In Vermont, if the lease be for more than one year, it must be sealed, witnessed, acknowledged and recorded, and so must an assignment of the lease to another. In Rhode Island, for the same term, it must be by a recorded deed. So in Minnesota, Ohio and Michigan, if for three years or more. In New York a three years' lease must be recorded. In Maine and New Hampshire, leases for seven years must be recorded.

In several states, where the common law is still largely in force, if a married woman leases her property at all, this paper, as well as every other conveyance of her interest in land, must be acknowledged by her to be her free act and deed without any compulsion by her husband.

At common law, a wife could not give a valid lease

of her property at all, her husband only being authorized to do so, and he alone took all the rents and profits therefrom. [But see Abstracts, Title "Married Women."]

The guardian of a minor may lease the latter's lands, but only for the time which will elapse *before the minor will attain his majority*; and such a lease may be defeated by the *death* of the ward or the appointment of a *new guardian*.

Liability of Lessee.

When one has actually taken a lease of property, he is liable, unless the lease stipulates to the contrary, for *rent and repairs*, and also on all *covenants or promises* which he has made in the lease, whether he enters into actual possession of the property or not.

Assignment of a Lease.

If no stipulation was made in the lease binding the lessee not to assign it to another, or not to underlet the premises, he may do the one or the other, if he does not care to occupy them; but if such a stipulation *was* in the lease as is often the case, he must continue to pay rent and to keep the premises in repair during the term, and he must leave them *untenanted* if he does not occupy them himself.

Even if he *does assign* the lease to a third party (there having been no stipulation against it, but an *express covenant* for the payment of rent, repairs, etc.), he *still remains liable to his landlord for such rent and repairs*. Although the landlord has *accepted rent from such third party*, thus impliedly consenting to the assignment, the original lessee may still be held responsible for further rent and repairs; and this has been

held true even where the landlord has actually given a *written consent* to the assignment, provided that he has not also specifically released the original lessee from his obligations.

The landlord may sue either the original lessee, or the party to whom the latter has assigned his lease, or he may sue *both*, but can only recover on an execution against one. If the original lessee has to pay the money, he in his turn, may sue *his assignee*, if the assignment contained binding terms. The assignee is responsible only for the time *after* he takes an assignment of the lease, and *until* he gives an assignment of it to another. He may *relieve himself from all obligations* thereon, at any time, by assigning to some one else, even though it be to a beggar.

Covenants in Leases.

It is customary to insert certain covenants in leases, by which each party binds himself to do or not to do certain things. The nature of such covenants depends on circumstances; thus the tenant often agrees, to keep the premises in as good repair as when he takes them; to pay all taxes, water rates, and assessments which may be made on the property; not to allow any unlawful, improper or offensive use to be made of the premises; that no alterations or additions shall be made without the written consent of the landlord; that he will not assign or underlet; and that the landlord may enter on the premises at seasonable times to examine into their condition. And the landlord usually covenants that, so long as the tenant pays rent as agreed, and performs all his other contracts, he will protect the tenant in the "quiet enjoyment" of the premises.

This last covenant, however, binds the landlord whether it is inserted in the lease or not, being *implied* in every lease; and the covenant by the tenant to repair, is generally qualified by excepting the injury which may be caused to the premises by "*reasonable wear,*" or by fire or other unavoidable casualty. So the tenant's covenant to pay rent is generally qualified by a provision that, if the premises be destroyed or damaged by fire or other casualty, the entire rent, or a just proportion of it, shall be suspended until the landlord shall have put them again in a habitable condition.

Of course the covenants in leases differ greatly. Sometimes the landlord agrees to make the repairs.

Conditions in Leases.

If either party breaks a covenant, he may be *sued* by the other party, who may recover damages for such breach; but the lease is not necessarily terminated thereby. It would *only terminate if there were a declaration in the lease that, if either party fails to keep his covenants, he shall thereby forfeit all his rights under the lease.* Then the party who fails to keep his agreement is liable to the other in a suit for damages, while the lease also becomes void if the other party so chooses.

Thus if the lease contained a covenant binding the tenant not to underlet any portion of the premises, and was given on condition that it should be forfeited if any of the covenants should be broken, then if the tenant underlets, the landlord may *terminate the lease at once, and also bring suit* against the tenant for damages. But if the landlord sees fit to waive this right, the lease is still binding upon the tenant.

It must be remembered that "covenants" are *promises under seal*, and that there can be no covenants in a lease which is merely written and signed without being sealed.

Any lease may be sealed, whether required to be so by the statute or not, and it is always desirable that it should be. Unsealed promises are of course binding on the parties to them, but a seal always gives additional force, and is especially desirable in all matters concerning rights in real property.

Waiver of a Condition.

If the party in whose favor a condition is made, *once waives it, he cannot afterward enforce it*. Thus if the condition be not to underlet, and the landlord once consents to an underletting, he cannot afterward object to further underletting, his consent operating to bind him forever, though he may not so intend it.

If a tenant dies, his executor comes into possession of the lease, unless it is expressly stated that such an event shall terminate it.

Underletting and Assignment.

To underlet is to let the whole of the premises for a part of the time, or a part of the premises for a part or the whole of the time covered by the lease, to a third person.

But if a tenant disposes of his *entire right* to leased property for the *entire term*, such an act operates as an *assignment of the lease*; and unless there is an express covenant under seal in the lease, binding the lessee to pay rent and keep the premises in repair, he may, by such assignment, entirely free himself from obligation to his landlord as already stated. It is

therefore very desirable to avoid the possibility of such a contingency, by expressly stipulating that the lessee *shall not assign or underlet* the premises or any portion of them.

Any lawful conditions may be inserted in a lease, at the will of the parties.

Entry for Non-Payment of Rent.

It is sometimes well to frame such a condition that upon non-payment of rent, the landlord may enter and take possession of the premises *without making a previous demand for the rent*, for this saves certain troublesome formalities which must otherwise be gone through with. These formalities differ more or less in the various states, but the common law rule prevails pretty generally, which is as follows:

In order to authorize the landlord to enter the premises and take possession for non-payment of rent, *a demand of the rent must be made precisely on the day when it is due, and for the exact amount due, at a convenient time before sunset, and at the front door of the dwelling-house.* If the rent be not paid then or during the day, the landlord may proceed to eject the tenant according to the process of law in his own state.

Some Particulars Concerning Leases.

The contents of a lease, as of all other contracts, are supposed to be known to the parties signing it, and *one can never plead ignorance* of such contents or of their legal significance, for before signing any paper, one should always read it carefully, or cause it to be read to him by some reliable person; and if it contains matter not readily comprehended, he should demand a full explanation.

If there is no stipulation in the lease concerning repairs, the tenant must make them himself; he cannot demand them from the landlord.

In nearly all states there are certain *statutory provisions* affecting to a greater or less extent the obligations of landlords and tenants, and these should be carefully ascertained by all persons who let or hire real property.

When a lease is transferred to another person, this assignment, like the lease itself, must be *in writing*.

Liability for Rent.

Of course, if the *landlord wrongfully evicts or expels* the tenant, no further rent can be claimed. But if the tenant be evicted by any *other person*, the landlord having nothing to do with it, the tenant still owes rent for the remainder of the term, unless there is a covenant to the contrary. His remedy is against the party who interfered with his rights.

At common law, rent was still due even after a house had been *burned down*, and to avoid such a possibility it is customary to insert a clause against it as already mentioned. In some states, statutes relieve a tenant in so severe a case, even though no mention of such a contingency be made in the lease itself.

Who Liable for Injuries?

If the tenant agrees in the lease to keep the premises in repair, *he*, and not the landlord, is liable in damages to *any one who may be injured by their being out of repair*.

Thus if snow and ice fall from the roof of a leased house and injure a passer-by, *the tenant* is responsible, as he would be if the injury were caused by the fall-

ing of any article from a window. But if the house itself falls, or any portion of the building—there being no special agreement as to outside repairs—the *landlord* would be responsible for any injuries resulting therefrom to passers-by.

To the *tenant himself* however, in such a case as the last, the landlord would *not* be responsible for injuries to person or property, it being the tenant's duty to inspect the house for himself before entering it, for, as the old books say, "There is no law against letting a tumble-down house." (Of course if the landlord *deceives* the tenant as to the condition of the premises, so that, by the exercise of reasonable care, the latter could not discover the threatening danger, he is responsible for the result of such deception.)

Surrender of a Lease.

Leased premises *cannot be surrendered before the expiration of the lease, so as to avoid payment of rent*, unless the landlord agrees to the surrender, and releases the tenant from his obligation.

CHAPTER XXIV.

REAL PROPERTY, CONTINUED.

Estates at Will—Emblements—How a Landlord May Terminate an Estate at Will—Statutory Regulations—Termination of Estate at Will by Sale or Lease—How a Tenant May Terminate an Estate at Will—Estates from Year to Year—Estates at Sufferance—How to Eject a Tenant at Sufferance—Trespassers.

Estates at Will.

Premises are frequently hired without any formal lease. In such case, the tenant has what is called an *estate at will* in the premises.

That is, the agreement that the tenant may occupy the premises is a good one *so long only as both parties continue to abide by it*; and it may be broken *at will* by either party. If the landlord wants to get rid of the tenant, he can give him *notice to quit*; if the tenant wishes to leave, he can do so *at any time*.

A tenant at will may let part of the premises to another, but he can only guarantee that his tenant shall remain in possession *as long as he himself shall do so*. He cannot *assign* his own interest at all, for he has nothing assignable, his own possession being subject to termination at any time.

Tenant at Will May Take Emblements.

If a tenant at will plant crops, and is *expelled by the landlord* before they are ripe, he may *enter upon the land and gather them* when they are in proper condition, and they will be his own. He may also enter within a reasonable time after expulsion, to remove his other property from the premises. But if he *voluntarily* leaves, instead of being expelled, before the crops are ripe, he cannot claim them.

How a Landlord May Terminate the Tenancy.

As has been said, either party may terminate the tenancy at will.

The landlord may terminate it by giving the tenant *proper notice to quit*. That is, he may serve a notice (which in some states must be, and always should be, *in writing*) upon the tenant *in person, distinctly setting forth the day on which the premises must be vacated*.

The length of such notice depends upon the time which elapses between two rent days. If the tenant pays rent by the month, the notice must be given a month in advance; if he pays by the week, only a week's notice need be given. If he pays by the year, six months' notice is sufficient in most states, and in some three months. The statutes regulating the matter of giving notice to tenants to quit should be examined by all who control real property, for the shades of difference between them can scarcely be given in this work. In illustration, however, it may be well to state the rule on the subject in Massachusetts, where a statute provides that to terminate an estate at will by notice, it must be in writing, and if the tenancy be for three months or longer, the

notice must be that of a quarter; if for a shorter time, or if the rent is payable oftener than quarterly, the notice must be equal to the interval between two payments. If the notice to quit be given for *non-payment of rent*, only two weeks' notice need be given, whatever the time of payments.

Termination by Sale or Lease of Property.

The landlord may also terminate a tenancy at will by *selling the property*, or even by *giving a lease* of it to another party.

This will have the effect of *instantly terminating* the tenant's estate, because he was the tenant of the *particular landlord* of whom he hired the premises, and who gave him no binding agreement that he should have them for any certain time; therefore he has a perfect right to sell or lease them at any time to another, and that other has the right of *immediate possession*, and can *oust the tenant at once*, giving him only time to remove his family and his goods.

The time for such removal may be very short. In Massachusetts, it has been held that forty-eight hours' notice is sufficient in such a case, and if at the end of that time, the tenant has not removed his goods, they may be taken out of the house, and placed on the sidewalk.

This method is often resorted to by landlords in order to expel tenants promptly. Frequently the party who thus takes a lease is a friend of the landlord, who has no intention of really occupying the premises or retaining any personal interest in them, but who merely goes through the form to aid the latter in securing the immediate expulsion of an undesirable tenant. Then, after this object is attained the

lease may be destroyed, and the landlord may make such further disposition of the premises as he sees fit.

This summary process is sometimes severe on tenants who are compelled to leave a house without having opportunity to find another into which to move; but there are also occasions when it is very useful, as where a landlord suddenly discovers that a tenant has been using a house for gambling, prostitution, or other illegal purposes, and it is very necessary to clear the premises immediately, without waiting the three months or more which might be necessary in giving the ordinary notice to quit. There may be statutes in some states restricting this right of the landlord, and before attempting to act upon it, one should carefully examine them for himself. Also it should not be forgotten that if the property of a tenant is removed from the premises by the landlord, or by his new lessee, or by order of either of these parties, and is injured owing to carelessness in such removal, as for example, if furniture is put out of doors in a pouring rain and left there, such party is responsible for the damage. So if a sick person is removed against his will, and is injured thereby.

How a Tenant May Terminate the Estate.

The tenant may terminate an estate at will by any attempt to sell it, or to assign his interest in it, as well as by actually leaving the premises and giving the landlord notice that he has quit, or by giving notice that he intends to quit at a certain time.

Estates from Year to Year.

In some states—as in Massachusetts, for instance—all tenancies which are not under written leases, are estates at

will; but in others, premises may be let orally for a certain stated time. An interest of this kind is called an *estate from year to year*. It can generally be ended by six months' notice, terminating at the close of the year. In some states shorter notice is sufficient.

Estates at Sufferance.

Sometimes premises are occupied by tenants who have *no agreement whatever* with the landlord, yet who *entered rightfully* in the first place. They are called *tenants at sufferance*.

Thus one who enters under a lease, but remains after the term of the lease expires, is a tenant at sufferance. A tenant at will *becomes* a tenant at sufferance if his landlord leases the premises to another.

A tenant at sufferance is usually *liable for rent* for the time he remains.

To Eject a Tenant at Sufferance.

Such a tenant must always *vacate the premises immediately upon request*. If he does not do so, the landlord may remove the windows and doors from the dwelling, and may even remove the tenant's goods. To do this, however, in any case, the landlord must first gain "*peaceable entry*" into the house. If he commit a breach of the peace, either in entering or afterward, he will be *criminally liable* therefor. He must also use due care in handling the tenant's goods, as has been already mentioned.

Tenants at sufferance are *not entitled to any notice to quit*. Summary proceedings may be begun at once to eject them. But the statutory provisions in one's own state touching the subject of ejectment of tenants should always be consulted before any step is taken

in that direction, and their requirements carefully followed. This warning is repeatedly given because of its great importance.

Trespassers.

One who takes *wrongful possession* of premises without any right whatever to do so, is not a tenant of any sort, but merely a *trespasser*. He has no rights or claims, and may be ejected at once.

CHAPTER XXV.

REAL PROPERTY, CONCLUDED.

Mortgages—Definition—Explanation of Terms—Mortgage Note—Oral Evidence Admissible to Prove a Mortgage—General Rule of Law as to Admission of Oral Evidence—Foreclosure of Mortgages—Power of Sale Mortgages—Foreclosure in Massachusetts—Improvements on Mortgaged Property—Fixtures—Mortgagor's Interest—Two or More Mortgages on Same Property—Mortgages Should be Recorded—Mortgages on Personal Property—Statutory Requirements—Foreclosure of Mortgage on Personality.

Sometimes when it is not desirable to sell or lease real property, a *conditional estate* may be given in it by a mortgage.

Definition of a Mortgage.

To quote from an eminent authority, "A mortgage at common law may be defined to be an estate created by a conveyance, absolute in its form, but intended to secure the performance of some act, such as the payment of money and the like, by the grantor or some other person, and to become void if the act is performed agreeably to the terms prescribed at the time of making such conveyance. *It is therefore, an estate defeasible by the performance of a condition subsequent.*"

That is to say, the owner of real property wishes to obtain money, and another party has money which he is willing to loan on good security. The former, therefore, borrows the money and gives a deed of his property to the latter; but the deed is given *on condition* that, if the money be repaid at or before a certain time (certain interest being paid for the use of the money meanwhile), the deed shall be void, and the land, or the house, shall become again the property of the original owner.

Explanation of Terms Used.

The party who borrows the money and gives the mortgage-deed of his property is called the *mortgagor*; the other party is the *mortgagee*. The mortgagor's right to repay the money and regain the estate at or before a certain day is called his *equity of redemption*. If the money is not paid and the mortgagee proceeds to take possession of the property, he is said to *foreclose the mortgage*.

This is, briefly, the common law concerning mortgages. Statutes in some states have somewhat altered their character and incidents, and in all states there are statutes strictly regulating the *manner* of giving and of foreclosing mortgages, which must always be carefully observed.

Possession of the premises is usually retained until foreclosure by the *mortgagor*, the law in many states giving him this right; but in other states the *right* of possession goes at once to the mortgagee, and it is only by *special agreement* in the mortgage—and such an agreement is frequently made—that the mortgagor can continue in possession.

Any interest in land which is capable of being conveyed

or assigned may be mortgaged; an estate for life or for years as well as one in fee simple.

The Mortgage Note.

A *promissory note*, acknowledging the receipt of the money and agreeing to pay it with interest, is usually given by a mortgagor simultaneously with the mortgage-deed, and this is called a *mortgage note*. [For Promissory Notes, see Chapters 11 and 12.] In some states, as in New York, a bond is given instead of a note. [For Bonds, see Chapter 13.] But it is *not essential* that a note be given, for if the mortgage stands alone, both parties will be equally bound, provided that the deed sets forth the particulars of the agreement with sufficient clearness.

Sometimes, by some error, fraudulent or accidental, the agreement is not clear, the conveyance appearing to be an ordinary deed instead of a mortgage. In such case, in nearly every state it may be shown by oral evidence that only a mortgage was intended, and the mortgagor will be allowed to redeem his property.

Rule as to Oral Evidence.

The above is an exception to the strict general rule of law that *oral evidence cannot be admitted to vary or change a written contract*. The rule itself, however, should be always borne in mind by people who put any kind of contracts in writing, that the *entire agreement must be written* in order to be binding. If any portion be omitted from the paper, but be agreed to ever so solemnly by word of mouth, *that portion is not legally binding on either party*, although, had there been no writing at all, the oral agreement might have

been perfectly good. There are some apparent variations from the rule, as in the case of mortgages already given, but they are comparatively unimportant, while the rule itself is exceedingly important.

How to Foreclose a Mortgage.

The courts have always favored mortgagors, and lest they should be dealt hardly with by the mortgagees, *further delay* was, from early times, granted them after the arrival of the day on which the money became due.

Thus in Massachusetts, the statutory provision requires that, when the money becomes due, and the mortgagor fails to pay it, the mortgagee may enter into possession of the property; but three years more must pass before the latter's title will become complete, during which time the mortgagor may *redeem* his estate by paying the debt. This preliminary possession may be taken quietly by the mortgagee if the mortgagor will consent, and a certificate of such entry must be signed by the mortgagor or else by two witnesses, and properly recorded. If the mortgagor resists such entry by the mortgagee, the latter must apply to the courts for a judgment of possession, under which he may compel the mortgagor to vacate the premises in his favor, until such time as the debt, interest, and costs be paid up.

Power of Sale Mortgages.

The delay occasioned by this process, may be avoided, however, if the parties agree to insert a *power of sale clause* in the mortgage.

It is only recently that this kind of mortgage has been considered legally binding, but now it is very

common. The power of sale clause may provide that, *in case the debt is not paid at the time prescribed, the mortgagee may immediately sell the estate*—having given proper notice of his intention to do so—pay over to the mortgagor *any surplus* which may remain above the mortgage debt, interests, and costs of sale, and that the purchaser of the estate shall have a complete and perfect title to the property. [See Appendix for blank form of Power of Sale Mortgage.]

One important distinction between the old method of foreclosure, and the more summary process just described, is that by the former method, the *entire estate* becomes the property of the mortgagee, who may keep it or sell it at his pleasure; and if he sells, he may keep the *entire proceeds*.

Provisions are made by statute in the various states restricting the method of sale under such a power.

Foreclosure in Massachusetts.

In Massachusetts, application may be made to the courts, and a decree for immediate sale may be had. But it is not necessary to apply to the courts at all, for the statutes allow a mortgagee (or any person to whom his interest in the mortgaged premises may have come by inheritance or assignment) to *act personally* in the matter without further authority than is given him by the wording of the power of sale clause itself. He must give all notices and do all acts which the agreement requires, and besides these, he must, *in every case*, publish a notice in some newspaper in the place wherein the premises are situated, giving clear and plain notice of the sale, for three successive weeks, the first publication being not less than twenty-one days before the day of sale. Within

thirty days after the sale, a copy of such notice, with his affidavit fully setting forth his acts in the matter, must be properly recorded in the registry of deeds.

(These particulars are enumerated, as are also others in this chapter, more with a view of illustrating the kind of procedure usual in the foreclosure of mortgages, than as giving information upon which to act. The laws in the various states differ so much in the matter, that it is scarcely practicable to attempt to give them here, even by means of an abstract. They must be carefully consulted by one who proposes to transact any business concerning a mortgage, and unless well accustomed to such matters, one should take good legal advice, and have his papers prepared by a competent lawyer.)

As to Improvements.

If a mortgagor makes improvements on the estate after mortgaging it, he can claim nothing for them, if the mortgage is foreclosed. They go *with the estate*. So if he puts up any *fixtures*, they become *part of the premises*, and he cannot remove them.

The Law of Fixtures.

Fixtures are personal property, firmly attached or annexed to land or buildings; as marble chimney-pieces, window-blinds, furnaces; or fixtures for purposes of trade, as counters, shelves etc. There are a great variety of these articles which, by being permanently affixed to a house or to land, are held to become a part of it, and cannot be removed by a party who has sold or mortgaged the premises. But blinds which are loosely hung on hinges would probably not be fixtures, nor would a house that is built on blocks instead of being fastened to a foundation.

A different rule prevails, however, in favor of *tenants*, who may, *before the expiration* of their tenancy, remove all such fixtures as they may have attached to the premises for the purposes of ornament, domestic convenience, or to carry on trade, providing that these can be removed *without material injury* to the premises.

As to Mortgagor's Interest.

In most states, a mortgagor's interest—that is, his equity of redemption—is liable to be *taken on execution* for his debts. The incidents of *curtesy and dower* also pertain to it, as to any other estate in land.

Two or More Mortgages on Property.

A mortgagor may give a *second and third mortgage* on his property; as many, in fact, as he can find people who will lend money on it.

The first mortgagee has the first claim on the property; after his claim is satisfied, that of the second mortgagee becomes first, and so on.

If the first mortgagee sells the property under a power of sale, the second mortgagee may *claim the amount of his debt out of the surplus* which may be left after the first mortgage is satisfied. If, however, the first mortgagee does not sell, but forecloses by the old process, the entire property becomes his, and the other mortgagees can *claim nothing*; but they would not allow this to occur, for if the mortgagor does not pay his mortgage-debt to the first mortgagee, the second mortgagee will probably pay it himself, thus saving his own claim on the estate, and adding to it that of the first mortgagee as well.

But these complications of second and third mortgages should be avoided, when possible, by people

who are not entirely familiar with dealings in real estate, for fine and difficult questions often arise concerning them which cannot be settled without recourse to the courts, involving time and expense.

Mortgages Should be Recorded.

Recording a mortgage serves as a *public notice* to the world, that there is already a claim on the property to a certain amount, which must *take precedence* of all subsequent claims.

This is why it is always essential to *search the records*, when it is proposed to lend money on a mortgage either of real or personal estate, to see whether it has been already mortgaged. (Mortgages of real property are usually recorded in the office of the registrar of deeds, and those of personal property in the office of the city, town or county clerk, auditor, or other official to whom such matters are intrusted.)

If property has been mortgaged, but the mortgage has *not* been recorded, it is *binding between the parties to it, but not as against any subsequent mortgagee or creditor*; and this is the reason why it is absolutely essential that every mortgage should be promptly recorded as soon as given. In no other way can the mortgagee make his interest and his money safe.

It is scarcely practicable to attempt any definition in this work, of the nature and incidents of the mortgagee's interest, for the subject is a complicated one, differing greatly in various parts of the country. In regard to the entire subject of mortgages, in fact, there is much more of general interest that might be given; but owing to the difficulties that lie in the way of making it clear and simple, the lack of space, the great variation of statutory laws regulating it, and

the desirability of taking special advice in almost every case of the sort, no attempt will be made to go into the subject at greater length.

Mortgages on Personal Property.

Personal property is also frequently mortgaged, and though the process is much simpler than in mortgaging realty, the statutes on the subject must be exactly followed if one would feel sure that his money is safely invested.

In Massachusetts, for instance, every such mortgage must be promptly recorded with the clerk of the city or town where the mortgagor resides; also where he is in business or trade, if his business and residence chance to be in different places. Failing such record, the *possession of the property* must be given to the mortgagee; otherwise the mortgage will not be good as against any *subsequent mortgagee, or any creditor of the mortgagor*. [See Appendix for blank form of Mortgage of Personal Property.]

Foreclosure of Mortgage on Personalty.

If the condition of the mortgage is broken, as by failure of the mortgagor to pay the debt, the mortgagee may foreclose. If there is a power of sale clause in the mortgage, allowing a sale upon any breach of the conditions by the mortgagor, the mortgagee may *sell the property* upon such breach, after giving *such notice to the mortgagor* of his intention so to do, as the mortgage itself, or any statute, may require. If there is no such clause, or if the mortgagee prefers to foreclose by the other process, for which statutes always provide, he may do so.

Statutory Provisions.

To illustrate once more by Massachusetts law, the statute on the subject provides that, after the condition is broken, the mortgagee or any party to whom he may have assigned his claim, must give to the mortgagor, or to the person in possession of the property and claiming it, *written notice* of his intention to foreclose the mortgage for breach of the condition thereof; which notice shall be served by leaving a copy with the mortgagor, or person in possession of the property and claiming it. It is possible, however, that this may not be convenient, for the whereabouts of the mortgagor may be unknown, and the property itself may be already in the possession of the mortgagee, in which case—or any other case where it may be more desirable—sufficient notice of intention to foreclose may be given by *publishing such notice* once a week for three successive weeks in one of the principal newspapers issued in the city or town where the mortgage is recorded, or where the property is situated; or, if there is no such paper, in one of the principal newspapers published in such county. This notice, with an affidavit of its service (if it be a written one served in person), must be recorded wherever the mortgage is recorded; and such notice and affidavit, when so recorded, or a copy of the record thereof, will be admitted as evidence that proper notice of foreclosure was given, if any question ever arises concerning it. After the notice is thus recorded, sixty days must elapse, within which time the money may be paid or tendered by the mortgagor who may thereby recover his property. But

if the time pass by without such payment or tender, the right of redemption is gone, and the property becomes that of the mortgagee, who may keep it or sell it at will.

CHAPTER XXVI.

PUBLIC LANDS.

Where Situated—Land Offices—Agricultural Lands—Pre-emption Laws—Who May Apply—"Offered" Lands—"Unoffered" Lands—Unsurveyed Lands—How to Establish a Claim—Homestead Laws—How to Gain a Homestead—Fees and Commissions—Timber Culture Claims—Desert Land Claims—Stone and Timber Lands—Mining Claims—Mining Laws—Boundaries—Discovery of Lode or Vein—Tunnel Sites—Essentials of a Claim—Application for Patent—Issue of Patent—Placer Claims—Mill Sites, Etc.—Water and Timber Rights.

Where Situated.

In certain parts of the country, there are vacant public lands, to which title may be gained by complying with the requirements of the United States laws concerning them. These lands are located only in the states of Alabama, Arkansas, California, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, Ohio, Oregon, Wisconsin, and in the territories.

Land Offices.

With the exception of Ohio, Indiana, and Illinois,

these states and territories are divided into land districts, in each of which there is a land office established by law, with a register and a receiver in attendance for the sale or other disposal of the public lands therein. (In the three states specially excepted above, very little public land now remains vacant, if any; and in some of the other older ones, there is so little, that the land offices have been concentrated and many of them abolished.) Any proper information regarding vacant public lands may be obtained at the land offices.

Agricultural Lands.

Of agricultural public lands there are two classes; the one class at \$1.25 per acre, and the other at \$2.50. The latter class consists of tracts embraced within the alternate sections of land reserved to the United States, in acts of Congress making grants within prescribed limits of the lines of railroads, to aid in the construction thereof.

Title is generally acquired to public lands by virtue of the pre-emption, homestead, timber culture, and mining laws; though it is possible in some cases to get title at public auction or by private purchase.

Pre-emption Laws.

Pre-emption claims are admitted upon "offered" and "unoffered" lands, and upon any of the unsurveyed lands to which the Indian title is extinguished, although in this case of unsurveyed lands, no conclusive proceedings can be had as to the completion of the title until after the surveys shall have been extended and officially returned.

Who May Apply.

The pre-emption privilege is restricted to heads of families, widows, or single persons over the age of twenty-one, who are citizens of the United States, or who have declared their intention to become citizens. No person can acquire the right who owns 320 acres of land in any state or territory; no person who quits his residence on his own land in the same state or territory in order to acquire the right; and no one who already owns a pre-emption claim, or who has filed a primary declaration therefor without having duly relinquished it.

"Offered" Lands.

Where the tract is "offered" land (that is, land that has been offered at public sale), the party must file with the district land office his declaratory statement as to the fact of his settlement, within thirty days from the date thereof, and within one year from such date, he must appear before the register and receiver, and make proof of his actual residence on the tract and cultivation of it, and secure the same by paying therefor.

"Unoffered" Lands.

Where the tract has been surveyed, but not offered at public sale, the claimant must file his declaratory statement within three months from date of settlement, and make proof and payment within thirty months after the expiration of the three months.

Unsurveyed Lands.

Where settlements are made on unsurveyed lands, settlers are required, within three months after date

of the receipt at the district land office of the approved plat of the township embracing their claims, to file their declaratory statement with the register of the proper land office, and thereafter to make proof and payment within thirty months from the expiration of said three months.

If a settler dies, his claim may be perfected by his executor, administrator or by an heir.

How to Establish a Claim.

To establish the right to a pre-emption, the claimant must make a settlement in person on the tract of land; he must improve it, erect a dwelling thereon, and make this dwelling his residence. His claim may embrace any number of acres not exceeding 160, or a quarter-section of land. He must make oath that he has improved the land in good faith for his own exclusive use, and not for speculation, or sale to others. He must also take oath that in all other respects heretofore enumerated, he complies with the requirements of the law on the subject, and if he be proved to have sworn falsely, he will forfeit the money paid for the land, and all right and title thereto. Such proof of the truth of his statements as may be required to the satisfaction of the register and receiver, must also be given. All formalities demanded of him by way of notice and otherwise, must be strictly complied with. [Further particulars will be furnished at any land office on application.]

Homestead Laws.

Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his dec-

laration of intention to become such, is entitled to *homestead* one quarter-section (160 acres) or a less quantity of such unappropriated surveyed public lands, as are subject to pre-emption at \$1.25 per acre; or 80 acres or less of such unappropriated lands as may be pre-empted at \$2.50 per acre. (In some cases 160 acres of the last named land may be homesteaded.) Or one owning and residing on land, may enter other land contiguous thereto, sufficient to aggregate 160 acres in all.

How to Gain a Homestead.

On making application, he must make affidavit that he is entitled to such a claim, that his entry is made for the purpose of actual settlement and cultivation, and for his own benefit. At the expiration of five years from date of such entry, he must prove by two credible witnesses that he has resided on the land and cultivated it during the five years; he must also make affidavit himself that no part of such land has been alienated (except for church, school or cemetery purposes, or for railroad right of way); and that he will bear true allegiance to the Government of the United States. The patent of title will then be granted. If the claimant dies before the expiration of the five years, proof of claim may be made by his widow, or if she be dead, by his heirs or devisees; or if the original claimant was a woman, by her heirs or devisees.

Homestead lands are not subject to be taken for debts which were contracted previously to the issuing of the patent therefor.

Fees and Commissions.

For homestead entries on lands in Michigan, Wis-

consin, Iowa, Missouri, Minnesota, Kansas, Nebraska, Dakota, Alabama, Mississippi, Louisiana, Arkansas, and Florida, the total of commissions and fees for 160 acres of land worth \$1.25 per acre, amounts to \$18.00; of land worth \$2.50, it amounts to \$26.00. In California, Nevada, Oregon, Colorado and the territories (excepting Dakota) the total is \$22.00 in the first case and \$34.00 in the second.

If a homestead settler decides that he prefers not to remain on the land so long as five years, he may complete his title to it by complying with the terms of a pre-emption claim instead, and paying over the money (\$1.25 or \$2.50 per acre) required to gain such a title.

Timber Culture Claims.

A claim may also be gained to 160 acres of land under the Timber Culture laws—the object of which laws is to encourage the growth of timber on the Western prairies. The claimant is required to break or plow five acres the first year, five more each succeeding year. Also in the second year he must cultivate the first five acres by raising a crop or otherwise, and the third year he must plant it in timber, seeds or cuttings. Each successive year therefore, he must break five new acres, raise a crop on the five next previously broken, and plant another five with timber. At the expiration of eight years, by making proof that the timber has been duly planted, cultivated and protected according to the provisions of the act, he, or his legal representatives if he be dead, will be entitled to receive a patent of title. Provision is made in the act for an extension of time in case the trees, seeds or cuttings be destroyed by grasshoppers or by extreme and unusual drouth.

Desert Land Claims.

Title to desert lands, not exceeding 160 acres, may also be gained in California, Oregon, Nevada and the territories. By "desert lands" is meant a class of lands which will not, without irrigation, produce any agricultural crop, and the claimant must reclaim the tract of land applied for, by conducting water thereon within three years from the date of his declaration.

Stone and Timber Lands.

Surveyed public lands in California, Oregon, Nevada, and Washington Territory, not included within military, Indian or other reservations, valuable chiefly for timber or stone, but unfit for cultivation, and which have not been offered at public sale, may be sold to citizens of the United States or those who have declared their intention to become such, to the amount of 160 acres only, at the minimum price of \$2.50 per acre.

Mining Claims.

A mining claim has been defined by the U. S. Supreme Court to be "the possessory right to explore and work the mine under the existing laws and regulations on the subject."

While the above is an accurate and concise judicial definition, it may be clearer for practical purposes to say that a mining claim is a piece of ground not exceeding 1,500 feet in length and of any lawful width, along the course of a vein, staked and marked by notice as required by law.

Mining Laws.

The United States statutes expressly provide for the reservation from general sale of all such portions

of the public lands of the country, whether surveyed or unsurveyed, as are valuable for mining purposes. But they are free and open to exploration and purchase, by citizens and those who have declared their intention to become such, under certain regulations specially prescribed by law, and according to the local customs or rules of miners in the several mining districts. Such is the Act of Congress on the subject; but in these later years, local customs have been in large part superseded by legislative action and judicial decisions in the various states and territories; and it is no longer true, as an old Irishman once declared to an attorney who was attempting to give him the law on a certain knotty point, that "mining law was just what any three miners may agree upon."

Boundaries.

Mining claims upon veins or lodes of quartz or other rock in place (that is, such rock as "lies in a fixed position in the general mass of country rock" as distinguished from loose deposits, which latter can be made the basis of a placer claim only) bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, were governed as to length along the vein or lode, by the customs, regulations and laws in force at the date of their location, prior to the act of May 10, 1872. Since that date, the maximum length of a claim, whether located by one or more persons, cannot exceed 1,500 feet. In no case can a vein be followed beyond the end-lines of a claim, and these end-lines must be parallel with each other.

No claim can extend more than 300 feet in width on each side of the middle of the vein at the surface; but no claim can be limited by any mining regulation

or legislative enactment to less than twenty-five feet on each side. In nearly all the counties of Colorado, the width of a claim is restricted to 150 feet on each side of the vein.

Discovery of Lode or Vein.

No location of a mining claim can be made until the vein or lode has been actually discovered to exist within the limits of the claim. But although the statute thus distinctly provides that the vein or lode must be discovered before a claim can be located, it is a common custom to stake out and locate claims before such discovery. The judicial decisions as to the extent of the title gained by such premature location are in conflict. Such a claimant can undoubtedly hold the place in which he may be working against all others having *no better right*; and it was held in one very important case that such a location gives to the claimant a *possessory title* to the full extent of the claim, which may be held by him for an indefinite period while he remains in occupation of it, searching for mineral, providing that he does not suffer another to stake a claim or prospect within his boundaries prior to an actual discovery by him.

Women as well as men may locate and hold mining claims, by compliance with the laws on the subject, as also may minors. It is only necessary to be a citizen of the United States, or to have made the primary declaration of intention to become such.

Tunnel Sites.

Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel have the right of possession to 1,500-feet

of any "blind" lodes which are cut, intersected or discovered by such tunnel within 3,000 feet from its "face" or point of commencement, which were not previously known to exist. (A blind lode is one which does not come to the surface at any point.) It has been held, however, that if before a tunnel reaches a blind lode, any other party, working from the surface, discovers the lode by sinking a shaft, he can claim it and the owner of the tunnel has no right to it.

The proprietor of a tunnel must give due notice of its location, in writing or print, on a substantial post or board at its point of commencement.

Essentials of a Claim.

The location of any claim must be distinctly marked on the ground, so that its boundaries can be readily traced. The record of every claim must contain the name or names of the locators, the date of location, and such a description by reference to some natural object or permanent monument as will identify the claim. On each claim located since May, 1872, not less than \$100 worth of labor must be performed or of improvements made, annually, until the patent is issued therefor. (The money expended in running a tunnel will satisfy the above requirement, if to the requisite amount.) The period of time during which such annual work must be done, commences on the first day of January succeeding the date of location.

Application for Patent.

Before application for a patent can be made, \$500 must have been expended on the mine, in improvements or labor. Having done this, and complied with all the laws respecting boundaries, the giving of pub-

lic notice of the claim, etc., any person, association or corporation may file his application with the register of the Land Office, accompanied by the affidavit of at least two persons that the notice has been duly posted; a copy of the notice itself; and a plat and field notes of the claim, made by, or under the direction of, the United States Surveyor-General.

It is not necessary to go further into the particulars of an application for a patent here, it being essential that the services of a competent attorney and surveyor be engaged when making such application.

Issue of Patent.

At the expiration of sixty days after making application, if all proper proofs are made and no adverse claims appear, the patent will be granted, on the payment to the proper officer of five dollars per acre.

Placer Claims.

Claims usually called "placers", including all forms of deposit excepting veins of quartz or other rock in place, may be entered on and patented as lode claims may be, but no location shall include more than twenty acres for each individual claimant, and if two or more persons having contiguous claims make a joint entry they can only do so to the sum total of 160 acres.

Mill Sites, Etc.

Non-mineral land to the amount of five acres, even though it be not adjacent to a vein or lode claim, if used by the proprietor of the claim for mining or milling purposes, may be patented therewith, on payment at the same rate.

Water and Timber Rights.

Rights to water for milling, mining, agricultural or other purposes, which are acknowledged by the local customs and laws will be maintained and protected ; also the right of way for ditches and canals, but not to the injury or damage of any settler on the public domain.

Timber or mineral lands in Colorado, Nevada and the territories (except Washington Territory) may be used for agricultural, mining or other domestic purposes, but it is not allowed to cut undergrowth or timber that is less than eight inches in diameter.

CHAPTER XXVII.

INHERITANCE OF PROPERTY—WILLS.

Transfer of Title to Property by Inheritance—Children's Inheritance—Advancements—Inheritance by Representation—Inheritance Per Capita—The Widow's Portion—Transfer of Title to Property by Devise, Legacy or Bequest—Who May Make a Will—Mental Capacity of Testator—Undue Influence—Married Women's Wills—Statutory Provisions—Rule in Massachusetts.

The title to property may be gained by purchase or by gift, and sometimes by discovery or finding, as has already been shown.

Transfer of Title by Inheritance.

It may also be gained by *inheritance from some relative* who dies without a will.

When real property is thus inherited it is said to be taken *by descent*; personal property *by distribution*. One who dies without a will is said to die *intestate*, and is often spoken of as *the intestate*. Thus, when speaking of an *administrator's intestate*, the deceased person for the settlement of whose estate the administrator has been appointed, is meant.

The title to real estate goes at common law directly to the heirs themselves, on the death of the owner. But in some states, the care of all the intestate's

property, real and personal, is given to the administrator, who, after payment of charges and debts according to the laws by which he must be governed, divides the realty by the law of descent in the state *where it is situated*, and the personalty by the law of distribution in the state *where the owner dies*. [See further as to Administrator's duties, Chapter 28.] In some states, the same rules regulate the distribution of both kinds of property, but generally they differ more or less. [See Abstracts, Title "Descent and Distribution of Property."]

Inheritance of Children.

The heirs who have first claim on the property of any deceased person, after the widow or widower takes the share of realty and personalty which the law gives her or him, are *the intestate's children*. Between them, in this country—though not in England—*equal division* is always made, except in cases where there have been advancements.

Advancements.

An advancement is a gift to a child from his parent, during the latter's lifetime, *in anticipation of the share* which it is supposed the child would inherit on the death of the parent. It may be equal to the whole or a part of such share, or even more. Its effect is to reduce the distributive share of the child in the realty, or personalty, or both, of the parent, by the amount received in advance, estimating its value at the time of receipt, unless its value is stated at a fixed sum by the parent at the time of making the gift.

The rule for deciding whether a gift by a parent to a child during the former's life shall be *considered an*

advancement, so as to cut off, or cut down, the latter's claim on the estate, is fixed by statute in some states, as in Massachusetts, where a gift is to be considered an advancement only where it is charged as such, in writing, by the parent, or acknowledged as such, in writing, by the child. Where there is no such statutory provision (and by express statute in some states), any gift made with a view to a portion or settlement in life, is *presumed* to be by way of advancement, unless the contrary can be shown.

Inheritance by Representation.

If a child dies before his parent, leaving children of his own, they take *by right of representation* the share of their grandparent's estate which their father or mother would have taken if living. So, in most states, do children of any deceased brother or sister take their parent's share, if the intestate's estate goes to these collateral heirs.

Inheritance Per Capita.

In some states, if all the children are dead, leaving children of their own, but no grandchildren, so that these surviving heirs are *all of the same degree of kindred to the intestate*, they share the estate *equally, per capita*, instead of by representation.

Thus A had two children, B and C; if A had died during the lifetime of B, but after the death of C who leaves one child, B would have taken half of A's estate, and C's child the other half. But if, when A dies B is also dead, leaving four children, the five grandchildren share the estate equally, C's child taking only one-fifth of the estate.

Widow's Portion.

In most states, there are statutes giving to the widow of one who leaves no will, some portion of his personal property. [See Abstracts, Title "Descent and Distribution of Property."] In Massachusetts, if he also leaves children, the widow takes one-third of his personalty and they take the other two-thirds. If there are no children, the widow takes the personalty up to the amount of \$5,000; the surplus above this sum, to the amount of the next \$5,000, goes to his heirs; but if the property exceeds \$10,000, one-half the excess above this sum goes to the widow, and the other half to his heirs. If however, the husband leaves a will in which he makes a provision for her, she may choose whether to accept the provision so made, or take the portion which the law would give her if he had died intestate. If she chooses the latter provision, she must, within six months after his death, file a written statement to this effect in the registry of probate. She will then be entitled to the same provision which has just been described, with this exception, that if the sum which she is to receive would exceed \$10,000, she can take only the income of *half of the excess* above that sum, and the court will appoint a trustee to take charge of such surplus of property, and to pay over the income, half to her and half to his heirs.

Transfer of Title by Devise or Bequest.

Title to property may also be gained by devise, or by legacy or bequest.

That is, when any person dies, *leaving a will*, the gifts of real property named therein are said to be *devises*, and those of personal property, *bequests* or

legacies. Those to whom devises are given are said to be *devisees*, and those who receive bequests or legacies are *legatees*. One who leaves a will is said to die *testate*, and to be a *testator*.

Who May Make a Will.

To be competent to make a will disposing of real property, the testator must be of sound mind and, in most states, twenty-one years of age. In some states, a will of personal property may be made at an earlier age; and in some, also, a *woman* may make a will both of realty and personalty, at eighteen. [See Abstracts, Title "Miscellaneous."]

Mental Capacity of Testator.

Perfect soundness of mind is not necessary to enable one to make a will; the memory may be much affected, the eyesight or hearing gone, and there may even be some degree of monomania or delusion, provided that it does *not affect his ability to comprehend the act which he is doing, and its effects.* If more than one sense has left the testator, as if he be deaf and dumb and blind, he may still be able to make a will, though greater proof must be given of such ability, as the presumption is against it.

If, however, a delusion of the testator's mind has *any direct effect* upon the will, it is invalid and cannot stand. The somewhat famous instance may be given in illustration, of the man whose mental hallucination caused him to believe that his legs were made of glass, and that if he should attempt to use them, they would break. If his mind had been sound otherwise, and his will had had no reference to this insane idea, it might have been valid. But the will which he did

leave, giving all his property to found a hospital for the cure of people with glass legs, was worthless.

So if a testator made his will at a time when he was so much intoxicated as not to know what he was doing, it is invalid.

Undue Influence.

The testator's mind may be sound, but his will may be weak, and he may be induced to make a will by *undue influence* exerted upon him by others. Such a will may be broken by giving proof of this fact. Urging or coaxing will not necessarily amount to undue influence, unless it is so great and the circumstances such, as to give the party an *all-controlling power* over the testator.

Married Women's Wills.

At common law, a married woman could not dispose of her real property by will, though she might make a will of her personalty *if her husband consented* to it. Even then, if he died before her, her will made by his consent was worthless, and her personalty went at once upon his death to his heirs. Upon her death, her realty went at once to her heirs, unless her husband survived her, in which case he took his life estate by curtesy, but at his death it went to her heirs. If, however, her property, real or personal, had been placed in the hands of trustees for her sole and separate use, before the marriage, so that her husband never gained any title to it at all, she could dispose of it by will without his consent, if the terms of the trust allowed her to do so. So if the husband consented after marriage that her property be given to trustees for her use, or if some other party, her father

perhaps, gave property in trust for her, with "power" in her "of appointment" by will, she could thus dispose of it.

Statutory Provisions.

These common law rules are given here because they are still in force in the states except just so far as they have been wholly or partially changed by statute, and excepting also the few states where the common law never prevailed. These statutory changes have been very generally effected however, and in a great majority of the states, married women may now dispose of their property by will, though in many cases with some restrictions. [See Abstracts, Title "Wills."]

In Massachusetts, for instance, a wife may dispose of *her realty* by will, but she cannot cut off her husband's life estate by the curtesy therein, provided there has been a child born alive to them, so that this right has accrued. If they have had no child, she may will her realty entirely away from him. She may dispose of *half her personalty* by will without his consent or knowledge; but to make a will of more than half, *his written consent must be given*. If such consent is not given, and the will purport to dispose of her entire property, it will be valid so far as one-half of her personalty, and the disposition of her realty after her husband's death is concerned, but no further. He may retain that portion of her property which the law gives him. Though if he chooses so to do, he may give his written consent to the will after her death, which would authorize her executors to carry out its provisions in full.

CHAPTER XXVIII.

WILLS, CONTINUED.

Care to be Observed in Making Wills—Construction of Wills—Use of Technical Terms—How a Will Should be Executed—Essentials of a Valid Will—Testator's Signature—Signature of Witnesses—Must Sign in Testator's Presence—Must be Competent—Interested Witnesses—Revocation of Wills—By a New Will—By a Codicil—By Changed Circumstances—By Marriage—Children Not Named in Will—Law Against Perpetuities—Conditions in Total Restraint of Marriage Void—Lapsed Legacies—Statutory Provisions—Nuncupative Wills—Olographic Wills.

A will should always be written with utmost care, that its meaning may not be obscure, and that its provisions may all be such as to be upheld by the law. Only a very simple, clear and short will should ever be attempted by one who is unversed in the law, and even that only in cases where it is not possible to have a lawyer attend to the matter.

Construction of Wills.

Courts are much more lenient in construing wills than any other documents, every effort being made to get at the *real intent* of the deceased. To this end,

the entire will is construed together as a whole; and if different parts conflict, the attempt is made to reconcile them according to the intention which *probably* actuated the writer. The intention is sought for, and enforced, even at the expense, sometimes, of the literal meaning of words.

Thus a *deed* is not good to convey a fee simple, as has already been seen, unless the grant is to "A and his heirs," the word "heirs" being essential to the life of the deed; but if in a *will*, one leaves real estate to "A and his children," the word children is held to mean heirs, if the context of the will so indicates.

The Use of Technical Terms.

But on the other hand, if certain technical terms or words whose meaning has been settled for centuries, are used at all, it is considered that they *must have been used with knowledge of such meaning*, and with intent that they should be thus understood.

So if one in a will leaves property to "A and his heirs," it cannot be construed to mean A and his children; and if A dies before the testator, without children, but leaving heirs, for instance, grandchildren, parents, brothers, sisters or wife, they will take the inheritance meant for him, even though the intention of the testator really was that only A and his own children should have the property.

It should be remembered that though it is a difficult matter to "break" a will, it is *very easy to raise questions* concerning its validity or its meaning, thus compelling the executors to defend suits; and all this unnecessary expense and trouble may often be avoided by using the clearest and most forcible language when writing a will, by making it as short and arranging it

as judiciously as possible, and by avoiding complicated codicils.

How a Will Should Be Executed.

A will should be written on parchment, or paper of the best quality, that it may not be easily destructible. It should be properly signed and witnessed, inclosed in an envelope plainly addressed to the executors, sealed up and deposited in some safe place where it can be readily found after the death of the testator.

It is often well to make *two copies* of a will, *each with the same formalities*, depositing one with an executor or lawyer, and keeping the other in one's own possession. The wisdom of this precaution may be seen from the fact that, if the will was last known to be in the possession of the deceased, and if it cannot be found among his papers at his death, it will be *presumed that he himself destroyed it* before he died; and this presumption will be conclusive, and his property will go to his heirs, unless it can be actually proved that some one else destroyed the will, or, what is much the same thing, that the deceased did not destroy it. And as it is often very possible, in time of sickness and death, with all the attendant confusion, for some dishonest person who is familiar with the testator's papers, to make away with his will in such manner that the act may never be traced to the right source, the desirability of having an authenticated copy deposited in safe hands becomes apparent.

In a few states, provision is made by statute, whereby one who makes a will may seal it up, properly indorse the wrapper with his name and that of the person who is to open it, and deposit it with some

specified officer of court, who shall file and preserve it until the testator's death, unless it be sooner demanded by the testator, or some one by him authorized to withdraw it. [See Abstracts, Title "Wills."]

Essentials of a Valid Will.

Though great care should always be taken in the wording and writing of a will, it is not so much to secure its validity as its clearness of meaning. But there are certain formalities connected with its execution which are absolutely essential to the validity of the document. A will may be written with pencil on any scrap of paper, or even with chalk or charcoal on the floor or wall, and yet be perfectly valid, providing it be *signed by the testator and witnessed by the proper number of witnesses, who sign it at the testator's request and in his presence*. Thus a man who was fatally injured while at work in a stable, scrawled his will with a bit of chalk on a loose board, called some men to witness it, and died immediately. The courts upheld it as a valid will.

In a few states the statute specially requires that a will be written on parchment or paper, and a few also require it to be sealed, in which cases it is of course absolutely essential that these formalities be observed. [See further as to the execution of wills, Abstracts, Title "Wills."]

Testator's Signature.

Of *first importance* to the validity of a will is the testator's signature. He may sign any name by which he is known, whether or not it be his real one; and even a cross or other mark is sufficient to constitute a valid signature, although it be proved that

he knew how to write and could have signed in full had he chosen to do so. It is only necessary to be able to prove, by the testimony of the witnesses, that it was the intention of the testator to make and sign a will which should dispose of his property according to his wishes therein expressed.

But of course it is always best and safest for a testator to sign his full name to such a document, in his usual handwriting. If he is too weak to do this, but is in possession of his mental powers, his hand may be guided by another. Or another may sign for him, without his making even his mark, providing this be done *by his special request and in his presence*. If he makes his mark, some one should write the name above or below it, to identify the mark as the testator's signature.

Signature of Witnesses.

The signatures of the witnesses are *quite as essential* to the validity of a will as is that of the testator (except in the rare cases of olographic wills, to be noted later). Each state prescribes by statute the number of witnesses required, and the formalities of their signatures; and no will is valid unless these statutory provisions are *exactly complied with*. [See Abstracts, Title "Wills."]

Two witnesses are required in most states, in some three, but in none, except Louisiana, more than three, so if there be any doubt as to the law on this point in a place where a will must be promptly made, the safe way would be to have three or more witnesses.

The testator must sign in the presence of the witnesses; he must declare the document to be his last will; he must request the witnesses to witness his signature; after he

has signed, they must also sign their names, as witnesses, in his presence, and in the presence of each other.

It is of utmost importance to the validity of a will, that the above instructions be followed to the letter. It is always desirable also, for convenience in identification, that a witness should write his residence with his name; and in a few states the statute requires him to do so.

A witness must never sign before the testator has signed. It seems superfluous to give such a warning, but experience has proved it to be necessary.

A witness may sign by making his mark only, some one else writing the name to which the mark is attached, if it be impracticable to obtain reliable witnesses who can write.

Must Sign in Testator's Presence.

Witnesses must sign *while the testator is conscious, and where he sees them, or may see them if he chooses to look.* If he becomes unconscious before the last witness of the number required by statute has signed, and does not recover consciousness and see another signature written in place of the worthless one, the will is invalid.

Witnesses Must Be Competent.

The witnesses must be competent ones; that is, *competent to testify in court*; of sufficient age and intelligence to understand the nature of an oath, etc. The testator's husband or wife is *not* a competent witness in most states.

Interested Witnesses.

One who is "*interested*" in the will, should never

witness it; that is, one to whom anything is given by the will, or the husband or wife of such party. In most, or perhaps all states, the only effect would be to deprive such an interested witness of the gift which he would otherwise take; the will itself, except as to such gift, would be valid; but it is never well to select such a witness.

In some states, if an interested witness is one who would have taken some part of the property of the deceased by inheritance, had he died without a will, such a portion of the gift intended as he would have inherited, is allowed to him. Generally too, if there are witnesses enough besides the interested one, to prove the will according to the statute, he may take the gift intended for him.

Revocation of Wills.

A will may be revoked at any time by its maker. The best way to revoke a will is by *utterly destroying it*; for though it can be revoked by *any tearing, or burning, or by drawing a pen through it*, questions may arise as to whether it was really the testator's intention to revoke it, and it is better, therefore, to put it entirely out of the way.

On the other hand, it should be remembered that if a will be in any degree torn or injured when discovered, false witnesses may swear that the injury was done to it by the testator with the intention of revoking it; and in absence of evidence, the presumption is often to that effect. Wills should therefore be very carefully preserved intact, or else utterly destroyed.

After once being written and signed, *no alteration*, however slight, can be made in a will. If a change

is desired, it must be effected *by a codicil, or a new will*, properly executed with due formalities.

No less a person than the poet Longfellow drew a line with red ink through a clause of his will, and interlined above this erasure a different wish as to the disposition of the property named in it. This had the effect of *revoking his entire gift* to the party indicated in the clause; and as his new wish was *not signed after being written*, that party took nothing whatever under the will.

So strict is the law in this respect, that it is altogether best that every will should be carefully written out, without any mistakes, erasures or interlineations, before being signed. But if there are any such erasures or interlineations, they should be specially referred to and identified in writing, above the signatures of the testator and witnesses. [See Appendix for blank form of will.]

Revocation by a New Will.

If the will be deposited where it is out of the testator's reach, he may revoke it by simply *making a new will*, which always revokes all former ones. It must be declared to be "*my last will*."

As has been said, any change desired in a will may be made by a codicil, but this is advisable only where the changes are few and slight. If *any extensive alterations* are to be made in the disposition of the property, it should be done by *making a new will*, thus avoiding the danger of complications.

Codicils.

A codicil is an addition or supplement to a will, and must be executed with the same formalities. It is no rev-

ocation of a will, unless there be special words of revocation, except to the precise degree in which it is *inconsistent* with it.

Revocation by Changed Circumstances.

There are some cases in which a will may be wholly or partially revoked by *changes in the condition or circumstances of the testator*. Thus, if, after making his will, he sells some of the property named therein, the will is of course revoked to that extent.

Revocation by Marriage.

The marriage of a man or woman after making a will, invalidates it in some states. [See Abstracts, Title "Wills."]

In Massachusetts, and probably most other states, the *marriage of a man is not sufficient by itself* to revoke a will, but his *marriage and the birth of a child* will revoke it, even if the child be born after his death. This is not the case, however, when the will, by its terms, *anticipates the marriage*, and provides for a future wife and children.

A woman's marriage invalidates her will at once, in the majority of states.

In some states a will is not *entirely* revoked by marriage or the birth of a child, but only so far as to give to the widow, widower, or child *such a portion* of the estate as he would have had in case there had been no will. It is safer in every case, however, to make a new will after marriage.

Children Not Named in Will.

In some states, if a testator *fails to mention one or more of his children* in his will, it is considered that he

forgot them, and that he intended to leave them some part of his property. In such case, the omitted child or children will take the portion which he or they would have taken if the parent had died intestate. Often the rule also includes grandchildren and great-grandchildren, who, if not mentioned in the will, may take such portion as they would have been entitled to, had there been no will.

It is therefore always best to mention all children in a will, and if it be not desirable to give them anything, either state the fact clearly, or "cut them off with a shilling."

Law Against Perpetuities.

There is in all states a "law against perpetuities" which must be borne carefully in mind whenever it is desired to tie up property for any length of time; that is, to leave property in the hands of trustees *for accumulation until some future event shall happen*, when it is to be paid over to a certain party or parties.

Property may be left in this way for a *reasonable time*, but not longer; and the law has decided in Massachusetts that the utmost limit of reasonable time is twenty-one years and nine months after the death of any person or persons named by the testator, and living at his death.

Thus a man may leave his property with trustees, to be paid over to his oldest grandchild (then unborn) twenty-one years and nine months after the death of the last surviving child of the testator. At the time of making the will, he may have but one very young child; he may live to have several more, but they will not take his property. His oldest grandchild who survives all the testator's own children and lives

twenty-one years and nine months afterward, will then become possessed of the property with all its accumulation.

By forgetting or neglecting this provision of law, many people have attempted in vain to preserve portions of their property for a certain time, the intention failing entirely, because they have named a definite number of years merely, or have otherwise violated the rule.

The statutes in the various states differ somewhat in fixing the time during which property can be tied up. [See Abstracts, Title "Wills."]

The law against perpetuities *does not apply to bequests to charitable purposes*. They may be given to trustees for any length of time desired.

Condition in Total Restraint of Marriage Void.

It must be remembered that no gift on condition that the party taking it *shall never marry*, or that he shall only marry *a certain person*, is good. But a gift may be left to a person *until* he shall marry, when it shall go to another. [See Chapter 2.]

Lapsed Legacies.

The doctrine of *lapsed legacies* may be mentioned. If a legacy be left to A, or to A and his heirs, but A dies before the testator does, A's heirs *take nothing*, because A himself did not live long enough to come into possession of the gift, and the legacy would therefore go into the residuum of the estate; that is, it would be added to that portion remaining after all legacies and devises have been paid.

Statutory Provisions.

But statutes have been very generally passed, pro-

viding that in such cases *children shall represent their parents*, and take the gift that would have come to the latter, had they lived, just as they would inherit in the estate of an intestate.

In Massachusetts, it is only the *children of relatives* of the testator, who may thus represent their parents. *The wife is not a relative of her husband*, so if he gives her a legacy, and she dies first, and he then dies without changing his will, her children, whether by a former marriage or with himself, will not take her legacy. But if he leaves a legacy to his sister, who dies before him, leaving children, they will take the share which his sister would have had if she were alive.

Nuncupative Wills.

In most states, there are cases in which one may dispose of his personal property—generally only to the amount of a few hundred dollars, however—by an *unwritten will*. This is called a nuncupative will. It is a solemn, spoken declaration, before witnesses who are requested by the testator to act as such, stating the disposition which he wishes made of his personal property. Usually an executor must be named by the testator.

The nuncupative will is allowed in all, or nearly all our states, when made by a *seaman at sea, or a soldier in actual service*.

In a number of states also (chiefly in the South and West, though Maine, Vermont and New Hampshire are among them), nuncupative wills are allowed when made in the *last sickness* of the deceased; but it has been held in several cases that such wills are good only when the testator was in *such extremity that there*

was no time or opportunity to make a written will. [See Abstracts, Title "Wills."]

A rule very generally prevailing concerning such nuncupative wills, requires that they be made in the *house of the testator's habitation* or dwelling, or where he had been resident for ten days or more next before the making of such a will, except where such person was surprised or taken sick, being away from his own home, and died without returning there. But the statutes of the various states where nuncupative wills are allowed, generally regulate all these particulars with much exactness.

It is the duty of the witnesses to a nuncupative will to *commit it to writing as soon as possible*, and the statutes usually prescribe some certain time, a stated number of days in most cases, within which they must do this, in order to give the will validity.

A paper not completed as a written will, where the completion has been prevented by the act of God, has been in a few cases admitted as a nuncupative will.

Olographic Wills.

In a very few states, as Pennsylvania, Arkansas, Virginia, Kentucky, Louisiana, and California, an *olographic* will is good. This is a will *entirely written, dated and signed by the hand of the testator himself*, and requiring no witnesses or other formalities. It is called an olograph or holograph.

CHAPTER XXIX.

EXECUTORS AND ADMINISTRATORS.

The Probate of Wills—Executor's First Duties—How to "Break" a Will—Letters Testamentary—Executor's Bond and Sureties—Further Duties of Executor—Claims Against Testator's Estate—Powers of Executor—Outstanding Claims—Advances to Legatees and Widow—Executor's Account—Administrator with the Will Annexed—Powers of an Administrator—Duties of an Administrator—Who May Be Executor or Administrator—In Most States a Married Woman May Be Executrix or Administratrix—Disposition of Personalty of Deceased—Compensation of Executor or Administrator—Order of Appointment of Administrator—Degrees of Kinship.

Probate of Wills.

When a person dies who is known, or supposed, to have made a will, an immediate and thorough search must be made for it; and in most—probably all—states, there is some statutory provision obliging any party with whom a will is deposited to produce it in court within a stated time after the death of its maker. In Massachusetts, it must be thus produced at the Probate Court within thirty days after such death. [See Abstracts, Title "Wills."]

A will may be opened before being thus presented

to the court for probate, by the executor or any other person to whom it is addressed, or if not addressed at all, by any person who has temporary authority in the family of the deceased—and read to all who are supposed to be interested.

Executor's First Duties.

The executor presents a petition to the court to be allowed to administer upon the estate of the deceased, as the will instructs.

If none of the heirs-at-law—that is, those who would inherit the estate if there was no will—object to his acting as executor or to the probate of the will, they may all sign the petition, thus saving expense and trouble.

If, however, one or more of the heirs intends to oppose the will, and refuses to sign, or if one or more are minors and cannot legally sign, a notice is ordered by the court to be *publicly posted or published in the papers*, giving information to all parties interested, and calling on them to come forward and assert their claims.

An affidavit of such publication must be filed in court by the executor. A time will then be appointed for a *hearing on the case*, and the witnesses to the will must be summoned to be present.

How to "Break" a Will.

If any heir objects to the will, he must be present at this hearing, state his objections, and offer proof to support them. He may insist upon his right to cross-examine all the witnesses (if they be alive and within the state), and may break down in any legitimate way the executor's case.

The executor must prove conclusively that *the tes-*

tator was of full age, and sound mind, when he made the will; that he is actually dead (absence without being heard from for seven years gives a presumption of death, which is sufficient in lack of evidence to the contrary); and that the witnesses properly signed the will.

Letters Testamentary.

If the hearing is decided in favor of the executor, or if no hearing is necessary—heirs having all signed the petition for the appointment of the executor—he must *give a bond* according to the requirements of the statutes in his state, *with two sureties*, and if the bond and sureties are approved by the court, a *letter testamentary* is then issued to the executor, giving him authority to act as such throughout the state.

Other executors or administrators may be appointed in other states wherein property of the deceased is situated, or the original executor may act as such in all.

Executor's Bonds and Sureties.

Testators often insert a clause in their wills requesting that their executors shall not be required to give any bond or furnish sureties; but the judge may exercise his discretion in acting upon the request, for the rights of creditors must be protected. A testator may, however, entirely relieve any trustees to whose charge he may give property, from the necessity of furnishing bonds or sureties, by so requesting in his will. [See further as to Trustees, Chapter 29.]

Further Duties of Executor.

A public notice of his appointment as executor

must be published by him in the manner prescribed by statute; he must take a formal inventory of all the property, real and personal, of the deceased, in the state—the appraisers being sworn before a justice of the peace to execute their duties faithfully—to which inventory the executor must *take oath*, and then it must be filed in the records of the court.

In each state a certain time is allowed the executor within which to collect the personal property of the deceased, sue all debtors of the deceased, and get ready to pay the claims against the estate. In Massachusetts and many other states, it is one year. [See Abstracts, Title “Wills.”]

He may pay such claims within the year, but it is better not to do so, for he cannot tell how many other claims may be presented against the estate, of which he knows nothing, and the estate may turn out to be *insolvent*, in which case no claims should be fully satisfied, but all should be paid *pro rata*.

If he pays claims in full, and the estate proves insolvent; or if he pays any unjust claims which the estate does not really owe, there is danger that he may make himself personally responsible for the amount which he has thus disbursed, through mistake or carelessness, and he may be obliged to refund it to the estate out of his own property.

An executor or administrator should, therefore, act with great care, and should have competent legal advice from the time when he accepts the trust to the time when he receives his discharge; as should also every guardian, trustee, or any one who takes charge of the property or business of another.

Claims Against Testator's Estate.

A certain time is fixed in each state *within which all claims against an estate must be presented*. In Massachusetts, it is within two years after the qualification of the executor or administrator—that is, after letters testamentary, or of administration, are granted. In many states, the time is longer, and in some, shorter. [See Abstracts, Title “Wills.”]

Before the provisions of a will can be carried out by the executor, he must satisfy *all just claims* against the estate; and if there is only property enough to satisfy these claims, it must all go for this purpose, for even a deceased man must be just before he can be generous.

In most states, the first claims to be settled out of the estate of any deceased person, are the expenses of his last sickness, his funeral, and of administration. Next come any claims of the state or the United States for taxes, etc.; and the claim of the widow or widower for dower, curtesy or homestead must also be satisfied before those of creditors are in order.

Powers of Executor.

The executor may sell the personal property of the deceased, if necessary, and if it is not sufficient to meet the demands on the estate, he may apply to the court for leave to sell a sufficient quantity of the real estate to make up the required amount. If the entire estate is insufficient, he must represent it as *insolvent*, and the proper steps will then be taken by which the claimants may receive a just and ratable proportion of their claims.

So long as claims which have been properly presented, *remain outstanding* against the estate, or as

debts due the estate have not been all collected and the entire business settled up, the executor cannot receive his discharge. In complicated cases, several years may elapse before the affairs of the estate are finally settled.

Outstanding Claims.

Sometimes there are claims, such as promissory notes, outstanding against the estate, which will not become due until some time after the settlement of all other debts. In such case, the court will, upon application of the executor, give him his discharge from general responsibility for the estate, but will order him to *retain money enough* in his possession to satisfy the claim when it matures.

Sometimes, too, claims against the estate of a deceased person are discovered by those to whom they are due, *after* the final settlement of the estate and discharge of the executor; and in such case, if the delay was not due to any negligence or fault of the claimant, his claim must be satisfied by the heirs, devisees or legatees, each of these parties *contributing pro rata* according to the share of the property of the deceased received by him. Such a case may occur where the creditor of the deceased has also died, and the claim is found among his papers. In most states, there are statutory provisions regulating these and similar cases. [See Abstracts, Title "Wills."]

Advances Pending Settlement.

Pending settlement of the estate, the executor may, at his discretion, make *advances to the legatees and to the widow*, in such sums as may be safe, considering the *condition of the estate*, whether solvent or

to what degree insolvent; and when the final distribution of the estate, after payment of all claims, is made or provided for, to those entitled under the will, the amounts of these advances will be deducted from the portion paid over to those who have received them.

Executor Must File an Account.

The executor must be *ready at all times, to account* to the proper authorities for the property in his control, and must *file an account*, whether demanded or not, within a stated time, usually a year.

Administrator with Will Annexed.

Sometimes no executor is named in a will, or the one named does not survive the maker of the will, or declines to act; in any of which cases the court will appoint an *administrator with the will annexed*, whose duties are the same as those of an executor.

Powers of an Administrator.

When one dies leaving property but no will, *the court appoints an administrator* whose duty it is to settle the estate by paying all claims, and then dividing the surplus among the heirs, according to the *laws of descent and distribution*.

At common law, and in many states, the administrator has charge only of the intestate's personal property, the title to which is in the administrator until he has settled the estate; while the title to the realty goes directly to the heirs. In many states by statute, however, the administrator has charge of all the intestate's property, though he must have an order of court to authorize him to sell the realty.

The duties of an administrator are very similar to those of an executor.

Who May Be an Executor or Administrator.

Any one who is *capable of making a contract* may be an executor or administrator. A minor cannot be, nor at common law could a married woman, but in most states, married women have been made competent to act as executrix or administratrix, though in some, the husband must give his consent. [See Abstracts, Title "Wills."] Drunkards, gamblers and improvident persons are by statute everywhere disqualified as administrators.

Many persons who would be disqualified as administrators may be executors, because the testator chooses to appoint them. In some states, however, as in Massachusetts and Pennsylvania, there are statutes providing for the removal of executors who prove themselves unsuitable for such office.

Disposition of Personalty.

An *executor* disposes of personal property in his charge, *as the will directs*, giving certain articles to certain persons—providing the estate is solvent so that it is not necessary to sell everything in order to pay the debts due from it. But an *administrator* must at once *collect, appraise and sell all personal property*, unless the heirs consent that certain articles shall be taken at a fixed value by those who wish to have them rather than the money.

Compensation of Executor or Administrator.

An executor or administrator is allowed out of the estate, all reasonable expenses incurred by him in

transacting its affairs, and generally he is also allowed a reasonable compensation for his time and services.

Order of Appointment of Administrator.

The appointment of an administrator must be made according to the established order of precedence in the state.

Generally the *widow or widower* has the first claim to administer upon the estate of the deceased husband or wife. But in some states it is not granted to the husband unless the possession of the property is to come to him; and in all states it is in the discretion of the judge to refuse administration to the widow if he deems her incompetent; or he may appoint her and the next of kin joint administrators.

Degrees of Kinship.

Second in order of appointment comes *next of kin*. The order of kinship is regulated by statute in each state. In Massachusetts the *deceased* is made the point from whence the degrees of kinship are computed. His parents and his children are related to him in the first degree. His grandparents, grandchildren, and his brothers and sisters are related in the second degree. His uncles or aunts, nephews or nieces, are of the third degree, and his cousins of the fourth degree. Because, from deceased up to his father is one degree, father up to grandfather another, and grandfather down to uncle is a third (thus making an uncle of the third degree of kinship), and uncle down to cousin is a fourth step.

These rules of consanguinity are of importance, as they regulate the *order of inheritance of property*, as well as that of appointment of administrators. [See

Abstracts, Title "Descent and Distribution of Property."]

When two or more are related in the same degree to the deceased, the judge uses his discretion in making the appointment, and often two or more parties are made co-administrators, performing the duties and bearing the responsibilities jointly.

If there is no relative of the deceased willing or competent to undertake to administer upon the estate, or if no one seeks to administer and the estate lies without settlement, one or more of the *creditors of the deceased* may be given the appointment, in order that a settlement may be secured.

CHAPTER XXX.

GUARDIANS AND TRUSTEES.

Natural Guardians—Guardian of Property—Statutory Provisions—The Mother as Guardian—Father's Control over Children Absolute—Testamentary Guardian—Appointment by Court—Marriage of a Woman Who is Guardian, Executrix etc.—Father Must Support Children—Mother Not Bound to Support Children—Effect of the "Poor Laws"—Mother is Guardian of Illegitimate Children—They Are Her Heirs, and She Theirs—Marriage of Parents of Illegitimate Child—Investments of Property by Guardian—Marriage of Female Ward—Age at Which Girls Attain Majority—Ward's Duties etc.—Guardian's Duties—Discharge of Guardian—Trustees—Trusts for Married Women—Duties of Trustees—Acceptance of Trust Essential.

Natural Guardians.

Every minor child must have a guardian. If the father is alive, he is the natural guardian, or if dead, the mother is.

Guardian of Property.

If the child *has property* and is less than fourteen years of age, a guardian must be appointed by the court to take charge of his property during his mi-

nority ; if he is fourteen, he may choose his own guardian. The natural guardian has no right to the charge of the child's property unless he, or she, be regularly appointed guardian for that purpose. But the natural guardian may retain the personal care, custody and education of the child, even though another be appointed guardian of the property, unless proved to be unfit for the charge, in which case the court may give the custody of the child to other parties.

If both parents are alive, but living apart, and one be unfit to have charge of the child, it will be given to the other ; or if that other consents, it may be given to a third person, appointed guardian by the court.

Some Statutory Provisions.

In some states, as in New Jersey and New Hampshire, the *same guardian* must have both the custody of the ward and the management of his property. In Maine, there may be separate guardians, but it is expressly provided that the father, if alive and able to transact his own business ; or if not alive, the mother, while *unmarried*, and thus competent, shall have the custody of a child, unless the judge specially decrees the care of the ward to the guardian of his property, deeming it for the welfare of the ward.

The Mother as Guardian.

Until very recently, the natural guardianship of a mother ceased in Massachusetts, if she married again, so that she no longer had the right to the custody of her children by her former marriage, but this is not now the law in that state, though it still is in Maine, as has just been stated ; and in New Hampshire, although the remarriage of a mother does not necessa-

rily terminate her guardianship, it is cause for which the judge may, at his discretion, revoke it.

Father's Control over Children.

The father's control over his children is generally *an absolute one*, unless the court interferes; but it was decided in one case that a father who was a foreigner could not carry his child out of the United States against the will of the mother, who was a native of this country, the child having been born here, and too young to decide for itself.

Testamentary Guardian.

The father may appoint a guardian for his minor children, born or unborn, *by his will*; if he is dead, the mother may, in Massachusetts and some other states, appoint a guardian likewise by her will. In the former case, the mother retains the custody and care of the children, and the guardian appointed by the father only takes charge of the property. In the latter case, of course, both person and property is given to the guardian.

In a few states, there are statutes giving to the father power to entirely remove the guardianship of the children from the mother.

In New York, every father, whether of full age or a minor, of a child born or unborn, may appoint a guardian for such child by his last will or by a deed of appointment, and the right of such guardian *entirely supersedes the natural right of the mother* to the care and custody of the child; so that, either during the father's life or at his death, he may give the custody of his children away from the mother. If the father dies without appointing a guardian, the mother's right

to the custody of the children is paramount to that of any other, and she may by her deed or her last will, appoint a guardian for them.

In New Jersey, the same rule prevails, but with this important difference, that in order to make the father's appointment of a guardian to his children by his deed or will valid, the mother must give her *written consent* to such appointment, and must sign and acknowledge it in the presence of two witnesses. But as in this state, custody both of person and property must be given to the same guardian, and as bonds are required from him in proportion to the amount of property, the natural claim of an impoverished mother to the guardianship of her children when there has been no appointment by the father, may sometimes be practically defeated where the child has much property, by requiring her to give bonds to a larger amount than she can raise.

Appointment by Court.

If no guardian is named by the parent's will, one must be *appointed by the court* if the child is under fourteen years of age; but if fourteen—and in some states, a girl at twelve—may *choose* his or her own guardian, and if the choice is one of which the court approves, such person will be appointed. If a guardian be appointed by the court before the child is fourteen, when he attains that age he may choose a new guardian, who will be appointed in place of the other, if his choice is approved by the court.

The Mother as Guardian.

The mother may be appointed guardian of her children's property (if she is competent to transact

business), either by the father's will, by the court, or by the choice of the children themselves when they are old enough to make it.

The *same party* cannot generally act as executor or administrator of an estate, and also as guardian of the children of the deceased ; so if the widow is executrix or administratrix of her husband's estate, she cannot generally be the guardian of her children, except that she may retain their personal care and custody as their natural guardian. In some states, as in Maine, a statute allows her to act in the double capacity.

Married Women as Guardians, etc.

In some states, and until recently in Massachusetts, the *marriage of a woman who is an executrix, administratrix or guardian, terminates her trust* ; although in states where a married woman is eligible to such an appointment, she may be reappointed. Now her trust is not terminated in Massachusetts by her marriage, and she may continue to act as executrix, administratrix, guardian or trustee after her marriage, though her sureties may decline to be further responsible for her acts, in which case she must furnish new sureties to the satisfaction of the court. [See Abstracts, Title "Married Women."]

Father Must Support Children.

The father must support his children, even though they be richer than he. But if the father be really poor and unable to support and educate the child properly, the court will allow a provision from the child's property for that purpose.

Mother Not Bound to Support Children.

The mother is not bound to support her children,

though the father is dead, and she the natural guardian; but may demand a sufficient allowance from the child's estate for the purpose. In a few states, statutes make the mother liable for her children's support. [See Abstracts, Title "Married Women."]

On the other hand, *the father is entitled to the services or the earnings of his minor child, but the mother cannot demand them*, except in a few states by statute.

Poor Laws.

Where a child, too young or otherwise unable to support himself, has no property of his own, the mother may be obliged to support him, in most states, if she has means to do so, *by the "poor laws."* In Massachusetts, the statute to this effect provides that "the kindred of such poor persons" (who would otherwise be paupers dependent upon the state) "in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity" (that is, such relatives by blood—not by marriage) "living in this state and of sufficient ability, shall be bound to support such paupers, in proportion to their respective ability." And if such support is not voluntarily given, the town may give it, and sue such kindred for the money.

In some states, the statute also makes a wife who has property, responsible for the support of her husband. In all other states, she is not thus responsible. [See Abstracts, Title "Married Women."]

As to Illegitimate Children.

The mother is the natural guardian of *illegitimate children*, and the father has no control over them during his life, nor can he appoint a guardian by his will.

If an illegitimate child dies without a will, and not leaving a widow, or legitimate children, his mother inherits his estate; and in some states, his brothers and sisters, of whole or half blood, may also be his heirs. [See Abstracts, Title "Wills."]

An illegitimate child may inherit his mother's estate, or that of her parents or grandparents (in Massachusetts and probably in most other states), but he cannot inherit from his mother's collateral relations, that is, from her uncles, aunts, cousins, brothers or sisters, nieces or nephews.

In most states, if the parents of an illegitimate child *intermarry*, and the father *acknowledges him* as his child, he *becomes legitimate* thereby, as though he had been born in wedlock.

Investments of Property by Guardian.

In investing the ward's property, *sound discretion and good faith* must be exercised. In Massachusetts, this is all that the statute requires, but in some states the limitations are somewhat more strict, prescribing the kinds of investments which must be made. *The ward's money must not lie idle*, and if the guardian allows it to do so, wilfully or carelessly, he will be charged with interest thereon.

If the guardian is guilty of *any negligence* in his care of the ward's estate, whereby it suffers loss, he is *personally responsible* therefor, and must make it good to the estate.

The guardian must account for all the receipts and proceeds of the estate, and *cannot personally benefit* by them in any way. This would be a breach of the good faith required.

Even for some time *after the ward attains majority*,

the court will strictly criticise any conveyance or transfer which he may make to his parent or other guardian, of any portion of his property; for it is supposed that the parent or guardian may still exercise an undue influence over the former ward. If desirable that such a conveyance or transfer should be made, care should be taken that the former ward shall have *competent and independent advice* from a lawyer or other disinterested person, that he may so act in the matter that the title he gives shall be good, and not likely to be set aside by the court in case he—the former ward—should afterward change his mind and wish to rescind the transaction.

Marriage of Female Ward.

In some states a female infant of any age becomes entitled to claim her property when she marries. In others, her guardian continues in control of it till her majority, though he loses her personal custody. [See Abstracts, Title "Miscellaneous."]

In states wherein a married woman holds her property free from the control of her husband, a guardian must take charge of it usually until she is twenty-one. In Massachusetts and probably other states, if a married woman, owning property, becomes insane, a guardian takes control of her property, just as is the case if a husband becomes insane.

When Girls Attain Majority.

In a few states, girls are of age and able to control property *before* they are twenty-one years old, whether married or not. Thus in Maryland, female infants of eighteen may demand and receive their personal and real property from their guardians, and

may also make wills disposing of both real and personal property; but in all other respects their disability and minority continue till they are twenty-one. [See Abstracts, Title "Miscellaneous."]

Ward's Duties, etc.

No guardian except a father, is bound to support a ward himself.

A ward is entitled to his own earnings. He must obey his guardian almost to the same extent as he must obey a parent, and should have his guardian's consent to his marriage as much as a parent's.

Guardian's Duties.

Every guardian must give a *bond with sureties*, as required by the statutes of the state in which he lives, and by the judge who gives or sanctions his appointment; and he must render such accounts of his guardianship, and of the condition of the ward's property, as may be required of him by law. In Massachusetts, he must "render an account on oath of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within one year after his appointment, and as often as once in three years thereafter; and at such other times as the probate court shall direct."

Discharge of Guardian.

At the *expiration of his trust*, when the ward reaches majority or dies—or in the case of an insane ward, when he becomes sane or dies—a guardian must *settle all his accounts* with the ward or his legal representatives, and should deliver over all property in his

hands, to the proper person or persons, and receive his discharge.

Trustees.

A word may be said here concerning trustees. Property is often given, by deed or by will, to a person who is to hold it and take care of it, *not for his own profit or advantage*, but for that of another person, who may not be qualified to take care of his own property.

Parents who have insane, idiotic, feeble-minded, or spendthrift children, for whom they wish to provide, often leave property for them in this way.

Trusts for Married Women.

At common law, as has been frequently remarked in these pages, married women could not hold property in their own right; and fathers or others, wishing to give them some independent provision, could do so only by leaving it to trustees, who paid over the income thereof to the beneficiary, as required by the terms of the trust.

It is very customary, even in states where women are legally capable of holding and managing their own property, to give it in charge to trustees in this way for their use, that it may be secured to them beyond any danger of their being persuaded to give it up to their husbands.

This plan is frequently resorted to, also, in favor of women who are not conversant with business; their friends who wish to provide for them, feeling reluctant to trust them to take care of the property themselves. Thus with the intention of sparing anxiety and care to the widow whom he may leave at his

death, a husband often gives the property which he intends for her, in trust to another who shall pay over the income to her. Property held in this way for a woman constitutes the *equitable separate estate* to which the statutes of many states refer. [See Abstracts, Title "Married Women."]

This is an extremely useful arrangement in very many instances, but it would be far more so if all trustees were honest and reliable. With the doubt which often exists on this point, however, it seems safer and better, when possible, that women should be taught to take care of their own property and should then be intrusted with its possession. There are very many women to-day who would be much better off if their lost protectors—fathers, brothers, husbands—had taught them to be independent, and had then given them the means to be so.

Duties of Trustees.

However, a great proportion of all property is, and has always been, in the hands of trustees. To a certain extent, executors, administrators and guardians are trustees, and the statements which have been made concerning the necessity of *good faith and good management* of property by them, apply equally to all trustees. They *cannot speculate* with the property intrusted to them, nor can they *retain any profits* which may result from its use. They must conform *exactly and carefully to the instructions and terms* under which the trust was created, and must pay over the income at such times, in such manner, and to such parties as the terms of the trust direct, and in no other way.

Acceptance of Trust Essential.

A person does not become a trustee merely by being *appointed* as such. He must *accept* the trust before it can devolve upon him; but if he once accepts, he cannot afterward rid himself of its duties and responsibilities, unless regularly discharged by the court. When necessary the court will appoint a new trustee.

There are sometimes two or more trustees, in which case they must all act together in matters concerning the property. It is well to have more than one, when property to any extent is given in trust, for they act as a check on each other and less danger is thus incurred of losses from dishonesty, carelessness, or ill judgment; also in case of the death of one, another or others will be left; it will not be necessary for the court to give the charge of affairs to a stranger, as must otherwise be done.

A trustee is *pecuniarily responsible* for the property committed to his charge; and a rule which prevails pretty generally, provides that he must make good out of his own estate, in case of loss, not only the principal and interest of the trust money, but also an amount equal to that which, by good management, he might have received on it.

CHAPTER XXXI.

MARRIAGE.

Husband and Wife One Person at Common Law—Disabilities of a Married Woman—Husband and Wife Cannot Testify for or against Each Other—Wife's Personal Property Becomes His—Wife's Choses in Action—As to Proceeds of Wife's Realty—Husband's Liability for Wife's Ante-Nuptial Debts—Marriage Settlements—Modern Statutes as to Married Women—Single Women and Widows—School Suffrage, Etc.

Husband and Wife One Person.

The common law doctrine that "the husband and wife are in law but one person," was born of the feudal system, and was never known in earlier civilizations; nor has it been adopted into other modern systems of law. In all European countries except England, the husband and wife are two distinct persons. They may have separate estates, contracts, debts and injuries; and may agree between themselves to hold their property in common or in partnership, if they so choose. This continental rule prevails in Louisiana, California, Washington Territory and some other parts of the far West and South.

Disabilities of a Married Woman.

By the old English common law, however, although the two were legally one, the wife was so inferior to the husband that he had the right to imprison her and to administer corporeal chastisement, as upon a child. The wife could neither sell nor give away any property of his or hers during her life (unless indeed she held an equitable separate estate—see Chapter 29), nor could she make a will. She could not contract a debt, nor enter into any binding agreement of any kind, unless it were that she might sign away her right of dower in her husband's lands. She could not receive a legacy (unless it was given to trustees for her sole and separate use), and if an executor should pay a legacy to her, he could be compelled by her husband to pay it over again to him. She could not act as executor, administrator, guardian or trustee unless by his consent. She could not sue or be sued, unless he were joined with her in the suit, and no judgment could be entered against her.

Being one person, contracts or gifts *between them* were not binding; and they could not enter into any business partnership together.

Husband or Wife Cannot Testify.

Neither husband nor wife could *testify for or against the other* in a civil suit; nor could either give evidence against the other in any criminal proceedings, with some few exceptions. Even in states where this rule is not now fully in force, *neither party can be compelled to testify* against the other, if unwilling to do so. [See Abstracts, Title "Miscellaneous."]

In the majority of states there are statutes expressly excluding any testimony as to a conversation

between husband and wife, at which no one else was present. After a divorce, the same protection is given as to conversations which took place during the marriage, the object of the rule being to protect the entire confidence which should exist between married people.

These rules concerning testimony do not apply to parties who live together as husband and wife without being married; they are competent witnesses against each other.

Wife's Personality Goes to the Husband.

At common law, a woman had *no control whatever over her property* during her married life. At marriage, *all her personal property went directly and entirely to her husband*, and never became hers again, unless given to her by his last will.

As to Wife's Choses in Action.

The only exception to this rule until modern statutes were passed, was in the case of the wife's *choses in action*. (This is a legal term used to include all outstanding debts and claims to which one has a right.) These did not become the property of the husband unless he *reduced them to possession* (that is, succeeded in collecting the money due on them) *during his lifetime*. If he died without doing this, leaving her alive, her right to these claims immediately revived.

As to Proceeds of Wife's Realty.

The use and profits of a wife's realty also went to her husband at common law, during the life of the wife; and if a child had been born alive during the

marriage, this right continued his throughout his life. [See Estate by Curtesy, Chapter 21.]

Husband's Liability for Wife's Debts.

As a supposed partial off-set to this condition of things, the husband who, at common law, became possessed of all his wife's property, became also *liable for her debts contracted before the marriage*, being obliged to pay them all, even if he supposed, when he married her, that she owed no one. [See Abstracts, Title "Married Women."] If he died without paying them, however, his estate was not liable for them, but the widow only; and this was true, even though all her property had gone to him at their marriage, and at his death to his representatives, she being left poor.

For though the widow had her right of dower in her deceased husband's realty—that is, a life interest in one-third of it—she had, by this old common law which we are now considering, no claim whatever on his personalty, all of which (unless he left a will to the contrary) went to his heirs; so that, if he left no realty, she might be penniless, though at marriage she had brought him a large fortune. [See further on Dower, Chapter 21.]

Marriage Settlements.

To avoid the hardships of these laws concerning married women, marriage settlements generally used to be drawn up in wealthy families, giving to wives equitable separate estates. [See Chapter 22.] This was, and still is, very common in England, but in this country the custom has never obtained to the same extent, and the effect of modern statutes on the subject has been to make marriage settlements of still rarer occurrence.

Modern Statutes as to Married Women.

The first statute giving a widow any right in her husband's personalty, was passed in England about 200 years ago. By this, if he died intestate, she took one-third of his personalty.

During the last half century, the legislatures of the various states of this country have set to work to make such changes in the laws concerning the legal status and condition of married women, as should protect both them and the community at large, from the evils attendant upon the old system. The result has been a vast amount of legislation, differing widely in the different states, and continually changing in the states themselves, as one point after another is yielded or altered.

In referring to the common law status of women, the past tense has been used, because it is now so largely obsolete. Yet this is not altogether the case, for, as has already been said, *the common law is still in force just so far as statutes have not altered it*; and this must be always borne in mind when consulting the abstracts of the laws in the different states, given in the last part of this work. They give the result of statutory enactments to date, as fully as it is possible to do in the limited space at command, on this important subject of the legal status of married women. [See Abstracts, Title "Married Women."] But every reader is advised, before consulting them, to read this chapter and the following one; and also to supplement the information thus obtained by referring to the statutes of his own state, being careful to get the latest issue of them, and all the subsequent supplements.

Single Women and Widows.

Of single women and widows, it is only necessary to say that they have *practically the same legal rights and powers that men have*, the principal exception being that they have not the political rights of suffrage and government offices.

School Suffrage, etc.

In a number of states, a limited right of suffrage has been lately given to women, by which they vote on school matters, and women are eligible in several states for election on school committees and boards, chiefly those which have charitable work to do. In many states, women have been admitted to the bar as attorneys, and various provisions in the different states have been made from time to time during the past few years, enlarging, or declaratory of, their rights, powers and privileges. [See Abstracts, Title "Miscellaneous."] In Washington, Wyoming and Utah Territories, women have equal political rights and privileges with men.

CHAPTER XXXII.

MARRIAGE, CONCLUDED.

Definition of Marriage—Founded upon Contract—Must Be for Life—Essentials of a Contract Necessary—Parties Must Be of Sound Mind and Legal Age—What Is Legal Age—When May Marry without Parents' Consent—Assent of Parties Essential—Informal Marriages—Disqualifications for Marriage—Consanguinity and Affinity—Forbidden Degrees—Disqualification of Race—Physical Incapacity—Previous Marriage—Presumption of Marriage—Law of Place as to Marriage—Effect of Prohibitory Statutes.

Definition of Marriage.

The word marriage has been defined to be "that act by which a man and woman unite for life, with the intent to discharge toward society and one another those duties which result from the relation of husband and wife."

Founded upon Contract.

It is a contract, but it is also more than a contract. Judge Story has said of it, "It is rather to be deemed *an institution of society, founded upon the consent and contract of the parties*; and in this view it has some

peculiarities in its nature, character, operation, and extent of obligation, different from what belongs to ordinary contracts."

Marriage Must Be for Life.

One primary difference between marriage and other contracts is that the latter may be made for a limited time only, and may be terminated even before that time expires, by mutual consent of the parties; whereas *marriage must be for life, and cannot be terminated by consent*, or in any way except by the death of one, or by a judicial decree of divorce.

Essentials of a Contract Necessary.

All the essentials of an ordinary contract must, however, be present in that of marriage.

Sound Mind and Legal Age.

The parties must be of *sound mind and of legal age*. At common law legal age was fourteen for males, and twelve for females. At that age a boy and girl might marry, and the union would be binding on both. If they married without the consent of their parents or guardians, it would still be binding, though some forfeiture might be exacted from the magistrate or minister who performed the ceremony. This rule still applies in this country, except where the legal age is raised by statute in some states. [See Abstracts, Title "Miscellaneous."]

If children over seven years old, but below the legal age, should marry, the marriage would be valid if they confirm it by living together after attaining legal age. But if either should wish to disaffirm it, he or she may do so before that age by simply refus-

ing to live with the other, without the necessity of applying for a judicial separation. (Though in this and all other cases where there is any doubt as to the validity of a marriage, it is always wisest to secure a judicial decree of nullity, to avoid the possibility of troublesome questions arising later.)

Marriage without Parents' Consent.

At the age of twenty-one, or in some states, eighteen for girls, parties may marry without obtaining the consent of parents or guardians. [See Abstracts, Title "Miscellaneous"]

Assent of Parties Essential.

Another essential of marriage in common with other contracts, is that *both parties must assent to it*. A marriage procured by *fraud, force, or mistake as to the identity of the person*, is not binding, and may be at once set aside by a judicial decree. [See Abstracts, Title "Divorce."] So if a marriage be entered into *as a jest*, it is no marriage.

Informal Marriages.

As no marriage can be binding *without* the consent of the parties, so on the other hand, according to the English canon law as it stood previous to the Council of Trent, the law of Scotland, the common law of some of our states, and probably, also, by the common law of England, a marriage would be binding (other essentials being present) *if the consent of the parties be given, and some mutual words of agreement to become husband and wife be spoken, even though no formal, open celebration* of the marriage according to statutory requirements, take place. This is unques-

tionably the law at the present time in New York, and in some other states. In Massachusetts the contrary rule prevails, and a marriage performed in that commonwealth (except between Quakers) must be solemnized before a minister or magistrate, in order to be valid.

Disqualifications for Marriage.

There are also some essentials of a marriage which do not apply to other contracts. These may be best given by naming some important disqualifications.

Consanguinity and Affinity.

Relatives nearer than first cousins cannot marry, and in some states marriage is forbidden between relatives of this degree. [See Abstracts, Title "Miscellaneous."] The reason for this disqualification of consanguinity is easy to understand, but the disqualification of affinity, which forbids one to marry *near relatives of one's deceased wife or husband*, is not so clear.

In the majority of our states, the English rule forbidding a man to marry his deceased wife's sister, does not obtain. A marriage of this kind is lawful in Massachusetts, but it is forbidden to marry certain other parties. Thus many will remember the marriage ceremony which was performed in that state a few years ago, between a well-known literary man and the daughter of his deceased wife, who had also been a celebrated writer. The marriage was supposed by the parties, and by the officiating clergyman, to be perfectly valid, but was really void, being contrary to the statute, which reads as follows :

"No man shall marry his mother, grandmother, daughter, granddaughter, step-mother, sister, grand-

father's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister or mother's sister. No woman shall marry her father, grandfather, son, grandson, step-father, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother or mother's brother."

In most states, the forbidden degrees are about the same as those just given, but they differ more or less; thus in the case referred to above, after attempt was vainly made to induce the legislature of Massachusetts to ratify the marriage by a special act, the ceremony was performed anew in New York, where it was valid.

Disqualification of Race.

In most Southern states and some others, *color* is a disqualification, marriages between whites and negroes being prohibited, and the parties who contract such unions being subject to criminal prosecution.

Physical Incapacity.

The parties to a marriage must be *physically capable* of entering into that state. Impotence in a man is cause for divorce everywhere. But mere barrenness in a woman is not cause for divorce, or disqualification for marriage.

Previous Marriage.

The last essential is that *neither party shall be already married*. In such a case, the second marriage is *void*, and the guilty party is criminally liable for *bigamy*.

But to make the second marriage void, the first one must have been *valid in all respects*, the former husband or wife must be *living*, and there must have been *no valid decree of absolute divorce* from him or her.

In some states, especially when a divorce has been given on the ground of adultery, the guilty party is forbidden to marry again unless he can first obtain leave of court so to do. [See Abstracts, Title "Divorce."] This was, until recently, the law in Massachusetts, but the rule now is that all divorces are given at first by a *decree nisi*. After six months, the divorce may become absolute, and the party who obtains the decree may marry again; but the guilty party, whatever the cause of the divorce, cannot marry until two years after the absolute decree is given.

If the first marriage was *absolutely void*, the second one is valid. But most marriages which are not binding are *only voidable*, and a judicial decree of separation is essential before a second one can be legally entered into.

Presumption of Marriage.

When parties are *living together as husband and wife*, the law presumes that they are married, and the supposed husband is as much liable to pay for the support of the woman with whom he lives as if she were really his wife.

Law of Place as to Marriage.

When parties are married in one state, and take up their residence in another, the general rule of law is that *a marriage which is valid by the law of the place where it is performed, is valid everywhere; and one in-*

valid where performed is invalid everywhere. [See further as to Law of Place, Chapter 18.]

Taking advantage of this rule of law, people who cannot legally marry in their own state, on account of some disability, statutory or otherwise, often go into other states where such disability does not exist, are married, and return to their home to live.

Effect of Prohibitory Statutes.

But this rule, that a marriage valid where performed is valid everywhere, may be *superseded by a statute* specially regulating the matter.

Thus in Massachusetts, there is a statute which provides that marriages performed out of the state *for the purpose of evading the laws of the state* which forbid the marriage of parties within certain degrees of affinity or consanguinity; of parties who are insane or idiotic; or parties who have a former husband or wife living and undivorced according to the laws of the state (including, of course, guilty parties within two years after the decree of absolute divorce is pronounced), shall be deemed *void* in Massachusetts if the parties at the time of their marriage *intended to return there to reside, and do so return.*

So if a party in Massachusetts against whom a divorce is pronounced, should attempt to marry before the expiration of two years, by going into another state where the law allows divorced parties to marry immediately, and having the ceremony performed there, intending at the time to return home to live, and should so return, the supposed marriage would be *void*. Both parties in such a case would be liable to *criminal prosecution* for living in adultery; their children would be *illegitimate*; and if they

should die without leaving wills, their property would descend to their other heirs, the children and widow or widower of the void marriage having *no valid claim whatever*.

Many such marriages have been entered into within the last score of years by people who, through carelessness or ignorance, have not realized what they were doing; and the next generation of their descendants will be litigating in the courts for possession of the property and family name of these selfishly thoughtless progenitors.

CHAPTER XXXIII.

DIVORCE.

Definition—Divorce from Bed and Board—Absolute Divorce—Decree of Nullity—Decree Nisi—Effect of Absolute Decree—No Decree Given by Default or Agreement of Parties—No Decree Given if Collusion Appears—Divorce Jurisdiction—Massachusetts Rule as to Jurisdiction—Fraud as to Domicil.

Definition of Divorce.

Divorce may be defined to be *the legal suspension or dissolution of the marital relation.*

Divorce from Bed and Board.

There are two kinds of divorce. The first is divorce "from bed and board," which is a decree of *legal separation, giving no right of marrying again to either party*, and leaving to each the interest in the other's property which the marriage gave. Such a decree has no effect whatever, in short, upon the marriage relation, except to give the right of living apart until a reconciliation may be effected, when the parties may resume cohabitation without taking further legal action. In a few states, such a decree may be given for a limited time, but it is generally indefinite in this respect.

Absolute Divorce.

The second is absolute divorce "from the bonds of matrimony," which is the only genuine divorce, and by which the marriage is *entirely dissolved*.

Decree of Nullity.

There is also a decree of nullity which may be given in cases where the marriage itself was, for some reason, *void or voidable*; and by which it is judicially declared that the parties were *never legally married*.

Most states provide by statute concerning the *legitimacy of children* of such void or voidable marriages. Thus in Massachusetts, it is provided that, when a marriage is declared void by reason of affinity or consanguinity between the parties, the children are illegitimate; when on account of the nonage, insanity or idiocy of one party, children are legitimate issue of the other party who was capable of contracting the marriage; and when on account of a prior marriage of either party, if the second marriage was contracted in good faith, and in full belief that the former husband or wife was dead, the children of the second marriage are the legitimate issue of the parent who was capable of contracting it.

A Decree Nisi.

In some states, a decree nisi is given in the first instance. That is, it is decreed that the parties are at once separated, and that a decree of absolute divorce may be given at some future time, *unless the parties become reconciled* meanwhile. It is a sort of probatory separation, like that from bed and board; and if the parties should wish to resume the marriage relation before the absolute decree is given, they

may do so at any time, without any further ceremony or legal action.

If a decree *nisi* is given without fixing the time when it is to become absolute, and if no statute fixes it, an application to the court must be subsequently made, asking that it be made absolute.

If given for a stated time, it is generally provided, as in Maine and Massachusetts, that *objection to a final decree* may be made during the probationary period by any one whose interests would be affected by the result. Such a party, by showing good cause, may in some cases prevent the final decree from being given. Such application may be made by either of the immediate parties to the suit, or by any one else whose pecuniary or family interests would be affected by the divorce.

Effect of Absolute Decree.

After an absolute decree of divorce is entered, the parties can assume marriage relations with each other *only by being remarried*; otherwise they would be criminally liable. They are generally free to marry other parties, as shown in the last chapter, the only exceptions being in a few states where, by statute, the guilty party is prohibited from marrying during a stated time, or absolutely prohibited unless leave of court be obtained.

No Decree Given by Default.

In most other legal actions, the parties may agree upon a verdict which shall bind both. Or by failing to put in an appearance when the cause comes up for trial, the defendant may allow the decision to be given against him, and in such case, the plaintiff need

put in no evidence, the absence and silence of the defendant being enough to give him "judgment by default," as it is termed.

But where the action is for divorce, the parties themselves are not the only ones concerned, for it is a matter of *gravest public interest* to preserve the sanctity of the marriage relation; and the party who applies for a divorce must, therefore, *prove every allegation* which it is essential that he should make, to the entire satisfaction of the court, precisely as he would prove it if the other party were opposing the action. The court acts, in a measure, in behalf of the non-contesting party—or rather, of the public, whose interest it is to have no divorces given lightly, or on insufficient grounds.

Effect of Collusion.

On this principle, the court is on the alert to discover *any indications of collusion* between the parties; and if the evidence shows anything in the nature of a mutual agreement for a divorce between them, no decree will be given.

Confessions of the defendant, either in court or out, are not sufficient evidence—unless in rare instances—to justify a divorce. The wrong-doing must also be proven by other testimony.

Divorce Jurisdiction.

It is customary in all states to make some provision regulating the classes of persons over whom the courts will take divorce jurisdiction, for it is not the policy of the law to allow people to leave their own states, and go to others where the divorce laws may be more elastic, for no other purpose than that of relieving themselves of their marriage bonds.

These regulations are not at all uniform in the different states, except in one particular. Every state requires that a party who seeks a divorce therein shall be *a citizen of that state*, and shall have made his or her domicil there for a specified time. [See further as to Domicil, Chapter 18.] In some states, one year's residence is considered sufficient proof of domicil. In others, a longer time is required, and in a few, six months is enough. [See Abstracts, Title "Divorce."]

Massachusetts Rule as to Jurisdiction.

In the statutes of Massachusetts there are two sections regulating this matter of jurisdiction as follows:

"Sect. 4. Except as provided in the following section, no divorce shall be decreed if the parties have never lived together as husband and wife in the Commonwealth; nor shall a divorce be decreed for a cause occurring in another state or country, unless, before such cause occurred, the parties had lived together as husband and wife in the Commonwealth, and one of them lived in the Commonwealth at the time when the cause occurred.

"Sect. 5. When the libellant has resided in the Commonwealth for five years next preceding the filing of the libel; or, if the parties were inhabitants of the Commonwealth at the time of their marriage, when the libellant has been such an inhabitant for three years next preceding such filing, a divorce may be decreed for any cause allowed by law, whether it occurred in the Commonwealth or elsewhere, unless it appears that the libellant has removed into the Commonwealth for the purpose of obtaining a divorce."

In other words, if both parties had their regular marriage domicil in Massachusetts at the time when

the cause for divorce occurred, the Massachusetts court has immediate jurisdiction; so if the parties had previously had their marriage domicil in the state, and one had left and gone to another state, where the cause occurred, the injured party, having continued to live in Massachusetts, may apply at once for a divorce. But if the parties had been inhabitants of the state before their marriage, were married there, and *then* went to another state to live, and after the cause of divorce occurred—whether it took place there or elsewhere—the injured party returned again and became an inhabitant of Massachusetts, she, or he, must remain three years before the court can obtain jurisdiction; and if neither party has ever lived in the state, either before or after the marriage, and the applicant comes into the state, she or he must remain five years before a divorce can be given. And in all these cases, the residence must be *bona fide*; that is, not taken up for the express purpose of applying for a divorce.

Fraud as to Domicil.

There is comparatively little danger of such fraudulent intention, where the time required to obtain a domicil is so long as five years; and if shorter spaces of time were not allowed in many states, there would be fewer fraudulent divorces obtained than is now unfortunately the case. But in states where residence is required for only a year or less, if one goes there on purpose to obtain a divorce, takes up his abode, and at the end of the stipulated time applies for a decree, it may be very *difficult to prove* that he only came for that purpose; and so, although the divorce may be granted, it is *obtained by fraud*, and is

liable to be *set aside* at any time, should the fraud be discovered and proved.

The matter of divorce domicil in Massachusetts has been considered somewhat at length, by way of explanation and illustration of the general subject, in order that the necessarily brief references thereto in the Abstracts of Divorce Laws in the different states, may be understood.

CHAPTER XXXIV.

DIVORCE, CONTINUED.

General Divorce Law—South Carolina Law—Causes for Absolute Divorce—Imprisonment—Adultery—Must Be Voluntary—Cruelty—Kinds of Cruelty—Husband May Charge Cruelty—Desertion—Must Be Voluntary—Intent to Desert is Essential—Husband May Select the Marriage Domicil—Refusal to Return on Request—Desertion by Fault of Applicant Will Not Give Divorce—How Long Desertion Must Continue—Drunkenness—Refusal of Maintenance—Conviction of Crime—Terms Used.

General Divorce Law.

In all states of the Union except South Carolina, divorce from the bonds of matrimony may be obtained for certain causes; the number and nature of which differ in various parts of the country.

South Carolina Law.

“In South Carolina, to her unfading honor, a divorce has not been granted since the Revolution.” So remarked the judge of a Georgia court, in laudation of the sister state. But in the South Carolina Reports may be found cases which indisputably prove that the *same grounds* exist there for divorce as else-

where. In one case, a man installed his negro slave as the mistress of his house, compelling his wife to submit to this and to various other indignities. There was no way by which she could legally free herself from this man, her husband; and the wisdom or morality of such a condition of the law is, to say the least of it, doubtful.

Causes for Absolute Divorce.

The most imperative cause for an absolute divorce is the adultery of either party. Cruelty and desertion come next in importance, and other grounds are named by statute in various states. [See Abstracts, Title "Divorce."]

Adultery.

In most states, a *single act of adultery by either party*, will give sufficient cause for divorce to the other.

This is not so in North Carolina, where, to give divorce to a *wife*, her husband must have *deserted her and be living in open adultery*; though the husband may have a divorce for a single act of adultery by the wife, unaccompanied by desertion.

Adultery Must Be Voluntary.

The adultery, to give cause for divorce, must be *voluntary*. If the act occurs under physical compulsion; or during insanity; or by mistake of facts, as where there is a genuine mistake of the individual; or if the party reasonably supposed the former husband or wife to be dead, and married again; no adultery is thereby committed.

There are, unfortunately, many cases in these later days, as already stated, where a party has ob-

tained a decree of divorce, which is for some cause or other an invalid one. In such an instance—unless it happens that the decree was void *solely on account of some fact whereof the party had no knowledge*—a subsequent marriage with another is illegal and adulterous. It seldom happens, however, that a divorce is thus invalid on account of unknown facts; it is generally void because the *law of the place where it is granted has not been fully complied with*, and it will be remembered that everybody is *bound to know the law* at his own peril, although he is not bound necessarily to know facts.

It is therefore evident that the greatest care should be taken in the preparation of an application for a divorce; that all the circumstances of the case should be *fully and precisely given* to the attorney who has charge of it; and that all the requirements of the laws on the subject should be exactly complied with, in order that no doubt may ever arise, by any possibility, as to the legality of the decree.

Cruelty.

Cruelty as a ground for divorce gives in some states, an absolute decree; in others a decree from bed and board.

Not every act, *even of physical injury*, is such cruelty as will give a divorce; and the *mental torture* which one of a married pair may cause the other by the most refined and terrible cruelty, will not come at all within the legal definition of cruelty, unless its *direct and natural effect is to injure*, or threaten to injure the *physical health* of the unfortunate party. The law assumes to protect the physical safety only.

The best definition of such cruelty as will justify a

divorce is thus given by an eminent authority on the subject. "Cruelty is such conduct in one of the married parties as, to the *reasonable apprehension* of the other, *or in fact*, renders cohabitation physically unsafe, to a degree justifying a withdrawal therefrom."

Kinds of Cruelty.

Such cruelty may consist of actual violence endangering life, limb or health; or conduct creating a reasonable apprehension of such violence; or, as has been said, such mental torture as affects the health or seems likely so to affect it.

Refusal by the husband to give his wife necessities of life, or medical attendance while sick, is cruelty, if he has the means to furnish them. There are other ways by which such cruelty as will give ground for a divorce, may be practiced, but it is not necessary to treat the subject more at length here.

Husband May Charge Cruelty.

The charge of cruelty is more commonly brought by the wife, but the husband may also charge the wife with cruelty in cases which come within the definition. Although he may be physically stronger than she, he is not expected to return blow for blow, or to overcome her by mere excess of physical strength. If her acts are such as to *injure or endanger his health*, either directly by physical means—as if she threatens to poison him—or indirectly through his mental anguish, they will be sufficient to give him a divorce.

A husband is justified in exercising force to prevent his wife from committing a crime or tort, for he is held criminally responsible, at common law, and in

many states, for any crime committed by her in his presence, and also civilly responsible for her torts. To save himself, therefore, from such liability, he may restrain her from such acts, and it will not be accounted cruelty. [See Married Women's Crimes, Chapter 37.]

Desertion.

Perhaps the best definition of the term desertion, considered as a ground for divorce, is as follows: "Desertion, in divorce law, and under the varying terms of our statutes, is *the voluntary separation* of one of the married parties from the other, *or the voluntary refusal to renew a suspended cohabitation, without justification* either in the consent or the wrongful conduct of the other."

Must be Voluntary.

The separation must be voluntary. If the husband drives his wife from the house, she does not desert him by going, but *he deserts her* by compelling her to leave him—that is, by voluntarily separating himself from her, provided that he does it with intent that she shall not return. But if, soon after such a separation, he *asks her in good faith to come back* (she having no good reason to believe that he is not really penitent, or that he will not treat her well in the future) if she refuses to return, her refusal will constitute *desertion on her part*.

Intent to Desert is Essential.

If there is the *intent of desertion*, it matters not by how great or little distance the parties separate. A removal to the next house, or to another tenement in the same house is desertion.

There may be a *mere temporary separation*, as when one party goes away on business or for a visit. This is not desertion, but if, during such separation, the resolution is formed *not to return*, desertion begins with the forming of such resolution.

Even though the husband pays for the wife's support, he deserts her if he *refuses to live with her*.

Husband May Choose Domicil.

A wife deserts her husband if she refuses to live with him at such place as he may select for their home. *The husband has the right to choose the domicil for both*, and if he removes to another state or country, and his wife will not accompany him, or will not go to him when he sends for her, *she deserts him*.

It has been held in a Vermont case, however, that it was not desertion when a wife refused to accompany her husband when he removed, against her wishes, to a habitation in the immediate neighborhood of his relatives.

If she can prove that her *health would suffer* by removal to the new domicil chosen by the husband, it is not desertion if she refuses to accompany him.

If either party treats the other *so cruelly as to compel a separation*, it will constitute desertion on the part of the former, but not on that of the latter.

Refusal to Return on Request.

It must be remembered that any *refusal* of the deserted party *to return* to cohabitation when requested in good faith by the deserting party, against whom no other charge of marital wrong can be brought, will end the desertion by the latter, and will create a desertion by the party who was at first deserted.

Desertion by Fault of Applicant.

One cannot gain a divorce by charging desertion upon the other party, if it was caused by the *fault* of the applicant himself, or if he *consented* to it.

How Long Desertion Must Continue.

Statutes in most states prescribe the time during which desertion must continue, to give cause for a divorce. Thus in Massachusetts the term is three years. [See Abstracts, Title "Divorce."] If no time is fixed, the court decides in each case whether it has been long enough to warrant a divorce.

The leading grounds for divorce have now been considered. There are a few others which are allowed in some states, but not universally.

Drunkenness.

In Massachusetts and many other states *habitual drunkenness* is a cause. The offending party need not be always drunk; it is enough if he is so under the control of the habit, as to drink whenever the temptation arises.

Many states fix a definite time during which the habit must have continued, and it is not generally cause for divorce unless contracted *after the marriage took place*.

Refusal of Maintenance.

Another cause for divorce in many states, is the *refusal of the husband* (being of sufficient ability) to *maintain his wife*.

In Massachusetts, such failure to provide must be practised "grossly, wantonly or cruelly," and it is difficult to sustain an action based on this ground

in this state, because if the wife is supported by her friends or relations or even by herself, the neglect of the husband to provide has been held not to be wanton and cruel in its results.

A New Hampshire provision authorizes divorce "when the husband shall have willingly absented himself from the wife for the space of three years together, without making suitable provision for her support and maintenance." So the desertion, failure to provide, and ability so to do, must all combine, and be proved to have continued for three years.

The *exact wording* of statutes must always be carefully considered by one who consults them on this or any other subject.

Conviction of Crime.

Conviction of crime and consequent imprisonment is in most states a cause for divorce. In such case the decree having been given, no pardon granted to the convict can restore him to his conjugal rights. Statute generally fixes the kinds of crime, and the term of imprisonment, which shall be ground for divorce.

Other Causes.

There are some other causes for divorce prevailing in a few states, but not of sufficient importance to be noticed here. [See Abstracts, Title "Divorce."]

Terms Used.

The terms "libellant" and "libellee" are used in many states to designate the parties to a divorce, the former referring to the party who applies, and the latter to the party against whom the application is brought. The application itself is called a "libel,"

when the above terms are used. But other expressions, as petitioner and defendant, plaintiff and defendant, and applicant and defendant, are used in other states to designate the parties to such a suit, and must be so understood if they occur in the abstracts of statutory law on the subject.

CHAPTER XXXV.

DIVORCE, CONTINUED.

Principal Defences to a Divorce Suit—Collusion—Connivance—Condonation—Recrimination—Adultery of Applicant is Absolute Defence—Cross Action of Divorce—Delay and Insincerity—Doctrine of Domicil—Utah Divorces—Ignorance of the Law No Excuse—Wife's Domicil.

Principal Defences to Divorce Suit.

The principal defences to a divorce suit are collusion; connivance; condonation; recrimination; delay and insincerity.

Collusion.

Collusion has already been referred to. [See Chapter 32.] It is *any agreement between the parties*, that one of them shall apply for, and secure a divorce. It is absolutely fatal to an application therefor.

Connivance.

Connivance is *any consenting* of the party who applies for a divorce *to that wrong doing of the other*, of which he complains. It bars a suit for divorce, because one cannot consent to a wrong against himself, and then complain of that wrong in court.

Condonation.

Condonation is any *forgiving of a wrong* by the party injured. Having once forgiven it, he cannot turn about and complain of it. It is sufficient evidence that the fault of one who has committed adultery, has been condoned by the other party, if, after the latter is aware of the fact, they *continue to cohabit*.

Therefore if a husband or wife learns with any certainty, that the other has committed adultery, and does not intend to forgive the offence, but to make it the ground of a divorce suit, it is essential that a separation should take effect immediately, *without a day's delay*. But a mere supposition, or mental conviction that the wrong has been committed, is not sufficient to justify an immediate separation. It may be delayed until reasonable proof can be granted; but having such proof, prompt action must be taken. The court is occasionally somewhat lenient to an innocent wife in such a case, for she may be delayed from immediate flight by entire lack of resources, and by fear of her husband. But it is not safe to rely on such a possibility, and no delay should ever be made.

Cruelty also may be condoned, so that no divorce can afterward be obtained on account of it, though the rule does not apply with quite the same strictness in this case as in that already considered.

Recrimination.

It is a legal maxim that the plaintiff "must come into court with clean hands." That is, he must not have been himself in *similar fault* to that of which he accuses the defendant.

Therefore, if the applicant for a divorce has not performed his or her own marital duty, the *defence of*

recrimination may be set up by the defendant; and if proved, it will avail to prevent the divorce from being given. The fault of the applicant must, however, to bar the plaintiff's suit, have been such as would have given the defendant valid ground for divorce, had he chosen to avail himself of it.

Adultery of Applicant.

This defence of recrimination is *absolute* when the fault alleged by the defendant against the plaintiff is *adultery*. A party who has himself been thus guilty will never, in any court, be allowed a divorce from his marital partner for the same or for any other ground. It is less certain to what extent the allegation of cruelty, desertion or other cause may be set up as a defence in recrimination, but justice is always sought by the courts, and as a rule, successfully.

Cross Action.

Frequently, instead of putting in this defence, the defendant merely denies the truth of the charges against himself, and files a *cross action of divorce* against the other party, alleging as ground the matter which might have been set up as recrimination against the first suit. The two cases are then tried together, and the court will decide whether a divorce shall be given to one, or to the other, or to neither.

Delay and Insincerity.

Delay, as a defence, is based on the general legal maxim that "one should not sleep on his rights." He should always *act promptly* in demanding justice, delay being suggestive of *insincerity*, which is in itself a sufficient defence. To avail of it, however, it is

necessary to prove that the plaintiff is not, in good faith, acting under the weight of the alleged grievance, but for some ulterior purpose. But insincerity cannot often be set up in a divorce suit, and need not be further considered here.

Doctrine of Domicil.

One of the most important matters for consideration regarding divorce, is that of domicil. The general rule [See Chapter 32] is that no court has jurisdiction over any cause of divorce, unless at least one of the parties has an *actual bona fide domicil* within the state where the action is brought.

To gain a domicil in a place, one must actually *live* there (or be actually on his way there for the purpose of a residence), and he must have the *intention of remaining* there permanently. Later on, he may change his mind a dozen times, and may change his domicil likewise, but if the intention of remaining has never in reality existed, no domicil has been gained, and a decree of divorce given upon the strength of such a residence merely, is subject to be opened up at any time in the future by proof of such lack of intention, and therefore lack of genuine domicil.

In many states the wording of the statute on the subject stipulates only for a "residence" for a certain time, in order to give divorce jurisdiction. But this word has been repeatedly construed by the courts to mean a domicil, and it *must be* thus construed, and a real domicil must have been gained and proved, in order to give a valid divorce. An attempt was at one time made in one of the Western states to construe the word liberally, so that mere residence might give divorce jurisdiction; but it utterly failed.

Utah Divorces.

Thus in Utah, the courts are authorized by statute to take divorce jurisdiction when is satisfied that the applicant either is, *or wishes to become*, a resident of Utah. Taking advantage of this specious wording, numbers of people all over the country have made out applications for divorce, declaring therein that they were very desirous of taking up their residence in Utah; and without removing at all from their real abiding places, have sent these papers to Utah, received decrees of divorce by mail, married again, have been indicted for bigamy, and in every such case that has come before the courts, they have been convicted and punished. Or if they escaped criminal indictment, and died, legal disputes have frequently arisen over their property, and the Utah divorces have invariably been pronounced invalid.

Ignorance of the Law No Excuse.

In many cases these people were doubtless ignorant of the false and unhappy position in which they were placing themselves and all parties to the alleged divorce, and subsequent marriage. They probably relied upon the word of some self-styled lawyer, who, having advertised to "obtain divorces quietly and for any cause," convinced his too-confiding client that the Utah divorce was all that was necessary. But it must not be forgotten that *ignorance of the law is no excuse* for negligence or other wrong-doing; and one is bound to exercise reasonable care in the choice of an attorney or other agent to whom to confide the charge of important business.

Wife's Domicil.

For all legal purposes, except divorce, a wife has her husband's domicil, even when in reality residing apart from him elsewhere; but *for divorce purposes* she may acquire a new domicil, independent of his. Thus a wife may leave her husband in a Western or Southern state, go to Massachusetts, reside there five years, and thereby acquire a domicil which will enable her to institute proceedings in that state for a divorce. [As to length of residence required in the various states to give domicil to an applicant for divorce, see Abstracts, Title "Divorce."]

CHAPTER XXXVI.

DIVORCE, CONCLUDED.

Alimony Defined—Court Must Have Jurisdiction over Husband—Independent Action for Alimony—When Alimony will be Given—Costs and Counsel Fees—Massachusetts Statute—Amount of Alimony—Court May Alter its Decree—Restoration of Wife's Property—As to Dower—Custody of Children—Welfare of the Child Determines its Custody.

Alimony.

"Alimony, in divorce law, is *the allowance which a husband pays, by order of court, to his wife while living separate from him, for her maintenance; or it may be a like provision ordered for the sustenance of a woman divorced from the bonds of matrimony, out of her late husband's estate. It may be for the wife's use during the pendency of a suit, called alimony pendente lite; or after its termination, known as permanent alimony.*"

Jurisdiction Over Husband Necessary.

If the husband is *out of the state* where the divorce is given, no decree can be rendered against him for alimony, because the court has no jurisdiction over him. But if he is domiciled in the state, or if he appears to contest the suit, jurisdiction is thereby gained, and he may be ordered to pay alimony.

Independent Action for Alimony.

In a few states, alimony may be given independently of divorce, and no suit for the latter remedy need be brought; but in the majority of states alimony is only given with a decree for separation or divorce.

When Alimony Will be Given.

As a rule, when a divorce is given to the wife, the husband, being of ability to do so, will be required to pay alimony, if a request for it is properly made. If the wife has means of her own sufficient for her reasonable support, an application for alimony will in many cases be refused.

Costs and Counsel Fees.

Costs of suit and reasonable counsel fees will also be generally given to the wife, if successful in her divorce suit.

Massachusetts Statute.

In Massachusetts, a statute provides that the court may require the husband to pay into court, for the use of the wife during the pendency of the libel, such sum of money * * * as may enable her to maintain or defend the libel; and the wife shall also, when it appears to be just and equitable, be entitled to alimony during the pendency of the libel." Similar law prevails on the subject in most states. [See Abstracts, Title "Divorce."]

Amount of Alimony.

It is usually held that a decree of alimony shall not exceed one-third of the annual income or profits of the estate, or occupation, of the husband.

Sometimes the use for her life, or during the separation, of part of his real and personal estate, not exceeding one-third thereof, is given her.

An extra allowance is sometimes required from the husband for the *maintenance of children* decreed to the wife's custody, when the wife's alimony is not sufficient for the support of both.

Decree May be Changed.

The amount of alimony is generally subject to be *changed by the court* at any time for sufficient cause shown. The subsequent shameless conduct of a wife, or her marriage to another, would probably be ground for a reduction or termination of alimony.

In some states, instead of requiring the husband to pay a certain sum as alimony, an *equitable division of his property* is made between them. [See Abstracts, Title "Divorce."]

Restoration of Wife's Property.

In most states, the property of the wife, real and personal, which came to the husband on marriage is *restored to her on divorce*. In some, only that which remains in his possession at the time of divorce, is given her; in others, if he has disposed of any part of it he must give her its equivalent in money. In Massachusetts, the statute is fairly representative of the prevailing doctrine, and provides as follows:

Massachusetts Doctrine.

"Upon a divorce for any cause except her adultery, the wife shall be entitled to the immediate possession of all her real estate in like manner as if her husband were dead, and the court may make a decree restor-

ing to her the whole or any part of her personal estate that has come to her husband by reason of the marriage, or awarding to her the value thereof in money to be paid by the husband. Upon a divorce for the cause of adultery committed by the wife, her title to her separate real and personal estate during her life shall not be affected, except that the court may decree to the husband so much of such estate as it may deem necessary for the support of the minor children of the marriage who may have been decreed to the husband's custody; and if the wife afterward contracts a lawful marriage, the interest of the divorced husband in the wife's separate real and personal estate, after her death, shall cease, except in so much thereof as may have been decreed to him as herein provided."

As to Dower.

It is also provided in Massachusetts, that "after a divorce, a wife shall not be entitled to dower in the lands of her husband, except when the divorce was for the cause of adultery committed by the husband, or because of his sentence to confinement at hard labor, in which cases she will be entitled to her dower in the same manner as if he were dead; and except also when, after a decree of divorce *nisi* granted on the libel of the wife, the husband dies before such decree is made absolute."

It must be remembered that this right of dower referred to in the statute just given, attaches only to such real property as the husband owned *during the marriage*, before the divorce was decreed.

Custody of Children.

Most states provide by statute for the *care and*

custody of the children, when parents are divorced. Thus in Massachusetts, "the court may, on application of either party, make such order concerning the care and custody of the minor children of the parties during the pendency of the libel as shall be deemed expedient and for the benefit of the children."

It is also provided that "upon a decree of divorce, or upon petition at any time after such decree, the court may make such decree as it may deem expedient concerning the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children or any of them shall remain; and the court may afterward from time to time, on the petition of either of the parents, revise and alter such decree or make a new decree as the circumstances of the parents and the benefit of the children may require."

There are further provisions giving the court the same power over children who are inhabitants of Massachusetts, when the divorce has been obtained elsewhere, and providing that they shall not be removed out of the state against their will, if they are old enough to consent, or if too young, against the will of either parent.

Welfare of the Child is the Test.

The good of the child, rather than that of the parents, is always chiefly considered in deciding to whom its custody shall be given; though usually it is given to the innocent party.

The superior right which a father has always been considered, at common law, to have to the custody of a child, is practically nullified when a divorce is pronounced between the parents, the *mother's right being*

considered equal to the father's. The custody of a very young child is generally given to the mother, whether she is innocent or guilty.

There are cases where the demands of both parents may be disregarded, and the child given to the custody of a third person as guardian.

It is usual when the custody of a child is given to one parent, for the decree to stipulate that the other shall have reasonable access to the child at any time, or at certain times; but if such privilege should be abused by attempts to prejudice the child against the parent who has its custody, or otherwise to injure it, the right of access may be terminated on application to the court.

CHAPTER XXXVII.

CRIME.

Definition—Motive not Important—Intent is of Primary Importance—Accident or Mistake of Fact is Good Defence—Mistake of Law is No Defence—Presumption of Criminal Intent—Intent to Commit Another Crime—Suicide a Crime in Some States—Criminal Negligence—Legal Malice—Mental or Physical Incapacity—Presumption of Crime—Modern Doctrine—Married Women's Crimes—In Husband's Presence—Insanity—Test as to Insanity—Drunkenness—Voluntary Drunkenness No Excuse—Classes of Crimes—Felonies and Misdemeanors—Classes of Criminals—Principals—Accessories—As to Near Relations, Etc.—Accomplices—Never Twice in Jeopardy for the Same Act—Extradition.

Definition of Crime.

A crime is any wrong act of which the government will in its name, to protect the public, take notice and punish.

Motive.

The motive with which a crime is committed, *does not affect it*. One may possibly be acting with most humane motives in putting a human being out of misery, when he is in great suffering, and, in all hu-

man probability, beyond recovery; but the act is murder just the same. One cannot set up for himself his own independent standard of right and wrong, on any matter in which other people besides himself are interested.

Criminal Intent.

But the *intent* with which the act was done is quite another thing, and is of *primary importance*. *Criminal intent must always accompany and influence a wrongful act*, to make it a crime. That is, the mind must will to do the act, which the hand commits.

Thus if one on awaking from sleep, sees a person in his room, thinks him a robber, and shoots him, the act is not murder though the intruder may prove to have been an intimate friend, or even a member of the family. So if one holding a pistol in his hand, slips and falls, causing the involuntary discharge of the weapon, which kills his wife, it is not murder.

In each of these cases—both of which are real instances, reported in the newspapers within a few days of the present writing—there was no criminal intent and therefore, no crime.

Accident or Mistake of Fact.

It is seen therefore that a *mistake of fact*, or an *accident*, is a good defence. But a *mistake of law* is not, for the oft-repeated maxim must still be borne in mind that "ignorance of the law excuses no one." Even a foreigner who has recently landed here, is held responsible under our laws, whether he has any knowledge of them or not.

Presumption of Criminal Intent.

But although this criminal intent must always be

present, it need not always be affirmatively proved, for when one does a wrongful act, the law *presumes that he did it with criminal intent*; and that presumption is sufficient for his conviction unless *he* can prove the contrary. This matter of the presumption of crime will be further considered a little later on.

Intent to Commit Another Crime.

If the prisoner seeks to defend himself by proving that he did not intend to do the particular act with which he is charged, but it appears that he *did intend to commit another crime*, and that in making the attempt, he committed the one for which he is on trial, the criminal intent which he really had is sufficient for his conviction. There is an old case to this effect in the books where a man put poison into a roasted apple, and gave it to his wife, intending to kill her; but she innocently gave it to their child, although he tried to persuade her not to do so, and the child died. The father was guilty of murder.

In a very recent Massachusetts case, a woman was about to shoot herself because her lover broke their marriage engagement; but he interfered, and in trying to wrest the pistol from her it was discharged, and the man was killed. The woman was found guilty of manslaughter, although exceptions were taken up to the Supreme Court, and every endeavor was made to save her, the ground of defence being that an attempt to commit suicide is not a crime in Massachusetts.

Suicide.

Such an attempt is a crime in many states, however, as in New York, where a young Italian gentleman of family and wealth, who was traveling in this

country, shot himself two or three years ago, because a young lady did not return his affections. As soon as he recovered sufficiently to be moved, he was obliged to appear in court to answer the charge of attempted suicide.

Criminal Negligence.

Criminal intent may be shown by negligence; that is, by *failure to take proper care not to commit a crime*, as well as by actual intent to commit it; though a crime of omission is usually less heinous than one of commission.

For example, an apothecary may be guilty of manslaughter by negligence in putting up medicine. And a man who neglects to maintain his wife or children, by means of which negligence one of them dies, is also guilty of manslaughter.

Legal Malice.

This criminal intent constitutes what is known as legal malice. In a popular sense malice means hatred or ill-will; but these feelings may be entirely absent, and yet legal malice may exist. *Any voluntary violation of the law, to the injury of another*, is committed with malice, in the legal sense.

Mental or Physical Incapacity.

As to constitute a crime, the act must be *voluntary, and done with knowledge of its probable results*, or done under such circumstances that such knowledge must be presumed, it follows that one who *lacks either mental or physical capacity to commit the crime, cannot be guilty thereof*.

Thus a boy under fourteen years of age is deemed

by law to be physically incapable of committing the crime of rape; and children below seven years of age are considered too young to be mentally capable of committing any crime.

Presumption of Crime.

As to children between seven and fourteen years, the *legal presumption* is that they are not conscious of the nature of their wrongful acts, and therefore having no criminal intent, are not guilty of crime; but this presumption may be overcome by actual evidence that the child *did in reality*, have criminal intent, and was guilty. If above fourteen years, the presumption is the same as that concerning adults who do wrongful acts, namely: That they *intend the results which would naturally follow them*, and are therefore guilty of crime.

But the prisoner may rebut this presumption by showing in his defence, that the act was done in *self defence, or by accident*, or that criminal intent was otherwise lacking.

Modern Doctrine.

The modern doctrine, however, which is rapidly gaining ground, is quite opposite to that just stated, namely: That unless *some facts or circumstances* going to show that the act was done *with* criminal intent, are proved by the prosecution, *the presumption of crime shall not prevail against the prisoner*, but the decision most favorable to him shall be given.

Married Women's Crimes.

Married women were supposed by the common law to be under the actual dominion of their husbands; and the same law which in old times allowed

a husband to administer chastisement to his wife with "a rod no larger than his thumb," had also sufficient consideration not to hold her guilty of any crime—except treason, murder, and perhaps some other violent crimes—which she committed *in her husband's presence*, holding *him* liable instead, on the supposition that she did the act under his coercion.

Recent statutes enlarging her legal abilities, or practically removing her disabilities, have not generally affected this presumption in favor of the wife, which is still in force in nearly all our states. In New York, however, no such protection is afforded the wife, a recent statute having removed it; and the same is true in some other parts of the country.

The presumption in her favor does not arise, when she is not in the presence of her husband at the time of the act, even though she acts under his express orders; for if he be not present, she need be in no immediate fear of him if she disobey, and may appeal to some one for aid and protection.

Test as to Husband's Presence.

To be in his presence she need not be in his sight. If he is so near that she is under his *immediate influence and control*, it is sufficient.

Thus in a recent Massachusetts case, the wife made an illegal sale of liquor, while her husband was out in the barn; but it was held that she did the act under his coercion, he being so near that she did not dare disobey him.

Although at common law, the property of the married pair all belonged to the husband, the theory that they were one person protected her so far that she could not be convicted of larceny for stealing

his property, nor of arson for burning his house, nor of conspiracy for conspiring with him. But they could be convicted for assault and battery on each other. Statutes very generally control these matters now.

Insanity.

An insane person cannot commit a crime, the criminal intent being lacking. But if he is sane enough to know that the act which he is about to commit is *wrong, and that he will be punished* if discovered, he is responsible. Or he may commit a crime during a lucid interval.

Test as to Insanity.

All degrees and kinds of mental disturbance are included under this term insanity; but to protect one who has committed a crime, his mind must be *so affected that he cannot understand the nature, character or consequences of the act* which he commits.

Drunkenness.

On the same principle, drunkenness may sometimes partially or wholly excuse an act committed when in this condition. But it is only when the intoxication is *produced by force or fraud*; as where one is compelled to drink, or is deceived by the supposition that the liquor is not intoxicating, or where one drinks for medicinal purposes by a physician's advice, that a crime committed in such a state can be fully excused, and it may not be, even then.

Voluntary Drunkenness No Excuse.

Drunkenness caused by *voluntary drinking* is no excuse for the crime, though it may affect its degree by

helping to prove lack of criminal intent. The presumption of law, however, is very strong that a drunken man, like a sober one, *intends the natural consequences of his act.*

Classes of Crimes.

There are three classes of crimes.

Of these the highest is *treason*, being directed against the government, and the very foundations of society. In the Constitution of the United States, treason against the United States is defined as consisting only of levying war against them, or in adhering to their enemies, giving them aid or comfort. The offence is punishable with death.

Felonies and Misdemeanors.

Felonies constitute the second class of crimes, and misdemeanors the third. It is not easy to define clearly the line of distinction between felonies and misdemeanors, though they differ very materially in many ways, and especially in their consequences. The most usual statutory test in the United States, is that *offences punishable with death or imprisonment in the state prison, are felonies*; and all others—except treason—misdemeanors.

Classes of Criminals.

Criminals—that is, parties guilty of a felony—are also classified into *principals and accessories*. (There is no such distinction concerning those who are simply guilty of a misdemeanor.)

Principals.

In some states principals are divided into those of

the first, and of the second degree. A principal in the *first degree* is one who actually *does* the criminal act; in the *second degree*, one who is present, *aiding or abetting* him who does it.

Thus, if two persons agree to commit suicide together by drowning, and one is drowned and the other is rescued, the latter is liable as a principal in the second degree to the crime of the other.

Accessories.

An accessory is one who, without being present at the commission of the crime, *renders some assistance to the crime or criminal*. If his connection with the crime was previous to the act, he is an *accessory before the fact*; if afterward, he is an *accessory after the fact*. Any harboring of the criminal, or giving him shelter and food, knowing that he has committed the crime, may make one an accessory after the fact.

As to Near Relations, etc.

A wife cannot be an accessory *after the fact* to her husband, because it is her duty to harbor and protect him under all circumstances. Strange to say, the older authorities did not give the same immunity to a husband, though his duty to harbor and protect his wife would seem to be at least equal to hers, as the later authorities admit.

Most states designate by statute, certain degrees of relationship within which protection of a criminal is allowable. In Massachusetts, the statute provides that "any person who harbors, conceals, maintains or assists a felon, or gives him any other aid with intent that he shall avoid or escape detection, arrest or punishment, shall be deemed an accessory after the

fact; but the rule shall not apply to husband or wife, brother or sister, parent or child, grandparent or grandchild either by blood or marriage."

No degree of relationship protects one from the charge of being an accessory *before the fact*.

Accomplices.

An accomplice is one who *shares in the commission of the crime* sufficiently to be indicted with the principal as a participator therein.

Twice in Jeopardy.

It is an old rule of criminal law that *no one shall be twice put in jeopardy for the same offence*. That is, if one has been duly tried, and convicted or acquitted, he can never be tried again for the same act.

Extradition.

An offence committed against the laws of one state or country is not generally deemed to be an offence against the laws of another. So if one commits a crime, and escapes to another state, he cannot be tried for the offence in the latter place.

But if the state against whose laws he offended can *prove satisfactorily* that he did the act, the state in which he has taken refuge will *give him up* at the demand of the state which claims him, by virtue of extradition laws.

CHAPTER XXXVIII.

CRIMES, CONCLUDED.

Specific Crimes—Abduction—Abortion—Adultery—Affray—Arson—Assault and Battery—Bigamy—Burglary—Drunkenness—Embezzlement—False Pretenses—Forgery—Homicide—Justifiable Homicide—Definitions of Murder and Manslaughter—Test as to Homicide—Intent in Murder—Malice Aforethought—Degrees of Murder—Manslaughter—Test as to Manslaughter—Larceny—Slander and Libel—Perjury—Rape—Seduction.

Specific Crimes.

A few specific crimes will be briefly noticed, taking them up in alphabetical order.

Abduction.

Abduction is an old common law crime, and consisted in the taking away of an adult woman, "maid, widow or wife," who had property or was heir apparent thereto, for the purpose of marriage. *Kidnaping* differed in that it included the taking away of any person of any age, for any unlawful purpose. Our states have generally defined this crime by statute. Thus in Massachusetts, the abduction of any unmarried female under sixteen years of age for the purpose of marriage, is a crime punishable by fine or im-

prisonment, or both ; and the abduction or enticing away of "an unmarried female of a chaste life and conversation" for the purpose of prostitution, is similarly punished. [See Abstracts, Title "Age of Consent."]

Abortion.

Abortion is a statutory crime. The statute in Massachusetts, which is a fair representative of those in most states on the subject, reads as follows:

"Whoever, with *intent to procure miscarriage* of a woman, unlawfully administers to her, or advises or prescribes for her, or causes to be taken by her, any poison, drug, medicine, or other noxious thing, or unlawfully uses any instrument or other means whatever with the like intent, or with like intent aids or assists therein, shall, if the woman dies in consequence thereof, be imprisoned in the state prison not exceeding twenty nor less than five years, and if the woman does not die in consequence thereof, shall be punished by imprisonment in the state prison not exceeding seven years nor less than one year, and by fine not exceeding two thousand dollars."

Another statute makes a crime of and defines the punishment for, any advertising or other notice, hint, or reference to any means by which abortion may be procured.

In New York, the woman who takes drugs with such intent is equally guilty with him who administers them to her.

The statutes on this subject in the majority of states make the procurement of a miscarriage, or the attempt to procure one, a crime, at whatever stage of pregnancy ; and the *consent* of the woman *cannot be set up as a defence* by the guilty party.

Adultery.

Adultery is not an offence at common law, and in a few states no statute has made it so. In most states however, it is now a punishable crime, though the statutes vary somewhat concerning it. In Massachusetts, if *either party is married at the time*, it is adultery in both. In many states, it is not adultery unless the woman is married; and in some it is not adultery if the man is single, even though the woman be married. The crime is punishable by fine and imprisonment, fixed by statute in each state. [Concerning adultery as cause for divorce, see Chapters 32-35, and Abstracts, Title "Divorce."]

Affray.

An affray is *any fighting in a public place*, of two or more people by mutual consent, to the terror of others. It differs from a riot in not being premeditated. Fighting in private is only an assault.

Arson.

Arson at common law is the *malicious and wilful burning of another's dwelling-house*. Statutes have generally broadened this definition. Thus in Massachusetts, the burning of any barn, stable, shop or other building, whether completed or not, or any pile of wood, stack of grain, trees, etc., is punishable as crime.

Assault and Battery.

Assault and battery is a crime, and it is also a civil wrong or tort, for which an action may be brought by the party injured to recover damages, as will be shown later. [See Chapter 39.] An assault is *an attempt to use any unlawful force or violence upon another*.

er's person, when within such proximity to the latter that it would be possible to accomplish it. The *carrying out of the intention* by actually inflicting violence constitutes a *battery*.

A mere threat is not an assault, unless there is an accompanying attempt to carry it into execution, with a reasonable chance of success. An attempt to strike a horse which a man is riding, or to take an article out of another's hand, is an assault.

The cutting off of a woman's hair against her will, is an assault and battery. So also is throwing water upon one, or stoning him.

If the party injured *consents* to the injury (such consent being voluntary and not induced by fear or fraud), there is no assault.

Blows or other personal violence bestowed in *self defence*, are allowable always, but *only so far* as is necessary for protection. If one in self defence injures his assailant more than he needs to do, his act becomes an assault and battery on his own part.

Bigamy.

Bigamy or polygamy is the crime of being married to *two or more husbands or wives at the same time*. If the first marriage was *absolutely void*, the second does not constitute bigamy.

Thus, if a couple are married, supposing that the former husband of the woman is dead, but he proves to be alive, the second marriage is absolutely void, and the man who supposed himself to be the woman's second husband is entirely free and may marry again. If, however, the first husband had been absent and unheard from for the continued space of seven years before the second marriage took place, the law pre-

sumes him to be dead, and the second marriage is valid. If it afterward turns out that he is alive, the second husband is not free thereby, nor the second marriage invalidated.

In the case of a first marriage that is *voidable only*, a decree of court annulling it must be had in most states before the parties can marry again without committing bigamy.

Burglary.

Burglary is at common law the breaking and entering the dwelling-house of another in the night-time, with the intention of committing some felony therein. Turning the lock of a door or window, or breaking a pane of glass, is *breaking*; and the mere insertion of an arm through the broken pane is *entering*.

Breaking *and* entering must combine to constitute a burglary. If the door or window is open, or only slightly ajar, and somebody walks or climbs in, with intent to commit a felony, it is not a burglary. People should keep their doors and windows fastened; otherwise, they are supposed to invite the world to enter. (Such an act is a crime, by statute, in most states, though not technically a burglary.)

The act must be committed in the *night*, and there must be an *intent*—though perhaps not carried out—to commit some felony in the house thus entered. In absence of any of these elements, the act was not burglary at common law, but most states regulate the crime by statute. Thus in Massachusetts, burglary may be committed in the day as well as in the night.

Drunkenness.

Drunkenness is a statutory crime in the majority of states. The statute generally requires that the use

of intoxicating liquors shall be *voluntary*, in order to make drunkenness a crime. A single act of drunkenness may be punished, but a "common drunkard" receives a severer sentence. It is generally considered that *three acts* of drunkenness must be proved, to substantiate the charge of being a *common drunkard*. [As to the sale of Intoxicating Liquors, see Abstracts, Title "Miscellaneous."]

Embezzlement.

Embezzlement is a statutory crime, being *the appropriation* to his own use of the property of another, by some one who already had *the lawful possession* of it. *Larceny* is the unlawful *taking* of property; *embezzlement* is its unlawful *keeping*. Thus a clerk or servant, to whose care property has been intrusted by his employer or master, is guilty of embezzlement if he appropriates it to his own use.

Embezzlement is substantially a breach of trust, for *intent to defraud* is an essential element of the crime.

False Pretences.

A false pretence is a crime which may be defined as a false representation made with *intent to mislead, and naturally calculated to mislead*. Any lie or other deceit so gross on its face as to make it improbable that any person of ordinary intelligence would be misled thereby, is not a crime. People are bound to keep their eyes open in this world, and not to allow themselves, by carelessness or over-confidence, to be cheated. If they consent, either actively or passively, to their own injury, the law will not help them.

Forgery.

Forgery is *any fraudulent making or altering* of a

document, *to the injury of another*. If it is done by mistake, or under innocent supposition that the act is harmless, there is no forgery, because there is *no fraudulent intent*.

Forgery is not confined to the fraudulent use of another's signature. The writing of any words over a genuine signature is also forgery. Some cautious business men will not put their names in autograph albums—or if they do so, will write them only in an upper corner—for leaves have sometimes been extracted from such books, promissory notes written over them, and money thus raised.

To make any *material and fraudulent alteration*, therefore, however slight, in a written, or even a printed document of another, by addition or subtraction, with the pen or pencil, or by cutting with scissors or knife, is to commit forgery, if the act be one which is *apparently capable* of injuring another's legal rights. Even though in fact such rights are not injured, it is forgery just the same. Or, if the act is not thus apparently capable of injury, but the fraudulent intent is present, and the result *really proves injurious*, the act is likewise forgery.

Homicide.

Homicide is the killing of a human being.

Homicide may be *justifiable*, or excusable—the terms, though originally distinct, being now practically synonymous—as where a soldier kills a man in a battle; a sheriff hangs a man who has been sentenced to execution; where one kills another in the endeavor to prevent the latter from committing some crime; or where the killing necessarily occurs in the defence of one's person, or perhaps, of his property.

A woman is always justified if she kills a man in defence of her honor.

When not thus justifiable or excusable, homicide is either murder or manslaughter.

Murder.

Murder is the unlawful killing of a human being, voluntarily, and with malice aforethought.

Manslaughter.

Where there is *no malice aforethought*, the act is *manslaughter*, whether it be voluntarily or involuntarily committed.

Test as to Homicide.

It is a rule quite generally accepted, that if death does not ensue *within a year and a day* from the commission of the unlawful act, it is not a homicide; it being considered, in such a case, that the death is not the result of the act, but of some other cause. This is an arbitrary rule, not always based on fact; for an injured person may linger longer than a year and a day, and yet finally die from the original cause. In such case, or if the injured party recovers, the guilty party may still be indicted for the crime of *assault with intent to kill*.

Intent in Murder.

To constitute murder, the killing must be done *voluntarily*; but if the intent is to kill one person and another is killed instead, the act is murder, on the principle already stated, that the intent to commit one felony is sufficient to convict of another that may unexpectedly result from the wrongful intent.

If death be caused by poison, starvation, or in any

other way, it is murder, as much as though caused by shooting. Poisoning was first considered murder in England in the case of a cook who poisoned seventeen people at one time ; and the punishment fixed for poisoning was that the murderer should be boiled to death.

Malice Aforethought.

The malice which is essential to be proved in order to convict of murder, must be "*aforethought*." But it need not be entertained for any great length of time, to come within the rule, for if it existed *a single moment* previous to the act, it is sufficient.

Express and Implied Malice.

Malice may be express or implied. *Express malice* is that which makes itself manifest *by words or acts* previous to the killing. But malice is *always implied from the very act* of taking life wrongfully and without justification ; though this implication may be rebutted by testimony to the contrary. [See Chapter 37 for further text on presumption of malice.]

Degrees of Murder.

In some states, murder is divided into two or more degrees according to the measure of malice, and the heinousness of the offence. Thus in Massachusetts, there are two degrees, the first punishable with death, the second with imprisonment for life. Murder in the first degree (as defined in that state) is any killing committed with deliberately premeditated malice aforethought, or with extreme atrocity and cruelty. All other murders are in the second degree. And it is always for the jury to say what the degree is.

Manslaughter.

It will be remembered that malice aforethought must be proved, to constitute the crime of murder. When a homicide is proved, but *no evidence can be produced by which to show the existence of malice aforethought*, the crime is manslaughter.

Manslaughter may be voluntary or involuntary. It is *voluntary* where there is *intent to kill, but under such provocation* that the law does not call it murder. It is *involuntary* when there is *no intent to take life*, but only an intent to injure the victim.

Thus, if a parent or teacher whips a child beyond a justifiable degree, and the child dies from the result of the blows, it is involuntary manslaughter. It may also be caused *by negligence*, as when, by careless driving, some one is run over, and killed.

Test as to Manslaughter.

In order to prove that a crime which is apparently murder, is in reality only manslaughter, it must be shown that there was *such provocation as would naturally and instantly produce in the mind of a reasonably prudent and self-controlled person, a state of extreme exasperation*.

This plea in mitigation of the crime cannot be urged, it must be remembered, unless the natural result of the provocation would be to produce extreme exasperation on the instant, and unless the crime really took place *immediately after* such provocation. If time enough elapsed to allow the blood to cool, the provocation is no excuse and the act is murder. It is on this ground that juries sometimes bring in a verdict of manslaughter against a husband who has been indicted for the murder of his wife's lover. If

such killing take place immediately on discovery of the guilty parties, under circumstances which are reasonably conclusive of actual guilt, this defence may be set up. But if the injured husband should wait, bide his time, and later on shoot his victim down in cold blood, the act would be murder.

Larceny.

Larceny, as has already been stated, a few pages back, is the *wrongful taking and carrying away of another's property*. At common law, there must be an *intent to keep* the stolen goods permanently, but in many states by statute, if the intent is merely to take them temporarily and then return them, it is still larceny. The goods stolen must have *some value*, or else they are not property.

Slander and Libel.

Slander and libel may be indictable crimes, but they are so seldom punished in this way—a civil action for damages being more usually brought by the party injured—that they will only be considered in this work under the head of torts. [See next Chapter.]

Perjury.

Perjury is the crime committed by one who, under *duly administered oath, in a court of justice* or before some magistrate, in reference to *a cause then pending*, wilfully gives any false testimony. If one is relieved from taking oath on account of religious convictions, and is allowed to "affirm" instead, any false testimony thus given is equally perjury. The false testimony must have concerned *some fact material to the case* under consideration; and all

the elements named in the foregoing definition must be present, to constitute perjury.

Rape.

Rape is a crime at common law and by statute everywhere. To constitute the crime, the victim *must not have consented* to the act, and must either have been insensible; physically incapable of resistance; or else she must *have resisted* to the full extent of her strength.

If the consent of the woman be set up as a defence, it must be proved that such consent was *fully and voluntarily given at the time of the act*. No subsequent acquiescence on her part can do away the guilt of the prisoner. Any consent given under fear of threats made against her life or liberty, or while under the effect of stupefying drugs, or liquor, or any other thing given her for the purpose of weakening her physical or mental powers of resistance, is not such consent as can be set up in defence.

To give such consent as may be thus set up, she must also be of sufficient age to do so. At common law, this was ten years. Statutes have raised the age in a few states, but much remains to be done in this direction before the protection is extended to the women-children of the English-speaking race, which common humanity would dictate. [See Abstracts, Title "Miscellaneous."]

It should be remembered also, in considering this subject, that it is often very difficult for the victim of this crime *to prove* that it was committed by force and against her will; so that the existing laws do not protect her in reality as much as they do in theory.

Until something less than fifty years ago, rape was

punishable in England by death, and this penalty was almost invariably enforced. But since then, imprisonment, or at most transportation for life, has been the sentence in that country. In our states, the penalty varies from death down to a small fine or short imprisonment.

A boy under fourteen years of age is deemed by law incapable of committing the crime, and cannot, therefore, be indicted on such a charge.

Seduction.

Seduction has been made a crime by statute in many of our states and territories. [See Abstracts, Title "Miscellaneous."] The majority of these statutes require that it be *under promise of marriage*, and it must be such a promise as to give the woman good reason to believe in it as genuine. If the promise be made at the time of the commission of the crime, and is the inducement for her yielding to him, it is sufficient to give a right of action. Some statutes, however, do not require any such promise.

In the majority of states, the statute stipulates that the woman shall have been of *previous chaste character*, and in such case, the meaning is that she must have possessed actual personal virtue, in distinction from a good reputation. But though she may have fallen at some previous time, yet if she had afterward reformed, it is sufficient to come within the requirement of such a statute.

Some statutes require that she be *enticed or inveigled away* from her parent or guardian, or in some cases from her home or wherever she might have been staying, by the accused; in which case it would not satisfy the requirement of the statute if she left her

home voluntarily and without his interference, and was afterward seduced.

Some statutes also require that such enticing away be for the *purpose of prostitution*; and this expression has been generally construed to mean an indiscriminate unlawful connection, so that where the sole object of the accused was to gain possession of the woman for himself, it was not sufficient to establish the crime. Other statutes say for the purpose of prostitution or concubinage; but this, too, has generally been held to mean concubinage with another than the seducer. In some states there are several statutes covering some or all of the various kinds of wrong herein referred to. [See Abstracts, Title "Miscellaneous."]

The uncorroborated testimony of the woman will rarely, if ever, be sufficient to secure a conviction. There must be other testimony establishing the crime.

The subsequent marriage of the parties is a sufficient defence everywhere. A few statutes also expressly provide that if the accused offered marriage to the woman in good faith and she refused, it is sufficient for his acquittal. [See Chapter 40 for seduction as a tort, giving a right of civil action for damages.]

CHAPTER XXXIX.

TORTS OR CIVIL WRONGS.

Definition—A Tort as Distinguished from a Crime—Classes of Injuries Which are Torts—Torts do not Survive—Personal Disabilities no Protection against Liability for Torts—Specific Torts—Deceit—Essentials of Deceit—Concealment—Buyer's Duty of Inspection—Due Care and Prudence—Slander and Libel—Kinds of Slander—Libel Defined—Slander Per Se—Special Damages—Publication Essential—Truth of the Charge—Privileged Communications—Malice—Confidential Relations—Answers to Proper Inquiries—Test as to Their Propriety—Repetition of a Slander—Malicious Prosecution—False Imprisonment.

Definition of a Tort.

A tort is any private or civil wrong by which an individual is injured, directly or indirectly, in person, property or reputation.

Distinguished from a Crime.

A crime, it will be remembered, is a *public wrong*, which the government takes upon itself to recognize and punish, for the protection of the common interests of society [See definition in Chapter 36]; while a tort is some wrong which is not of such general

public importance as to amount to a crime, but which may yet be of great importance to the person who suffers it.

Many crimes are also torts, in which case both criminal and civil action may be taken upon them. Thus an assault and battery is a breach of the peace, and therefore a public wrong, punishable as a crime; while it is also a private injury to the person assaulted, who may have a civil action for damages against the wrong-doer.

Classes of Injuries.

A tort may consist in an injury to *the person*, as by assault and battery, imprisonment or negligence; to *the reputation*, as by slander, libel, or malicious prosecution; or to *property*, as by conversion or trespass.

Torts do not Survive.

The death of either party to a tort, destroys the right of action, thus differing from the rule in contracts. Not only the parties to a contract are bound thereby, but also their estates after the death of either. But not so with torts, which "do not survive" the person. (There are some statutory exceptions to this rule, not necessary to mention here.)

Personal Disabilities no Protection.

Another distinction between contracts and torts is that parties under personal disabilities—that is, infants, and at common law, married women [See Chapter 5], who are unable to bind themselves by their contracts, are nevertheless *liable for their torts*. (The husband might also be sometimes liable for his wife's torts.)

Specific Torts.

Some specific torts will be briefly considered, little attempt being made to go into particulars.

Deceit.

It has already been stated [See Chapter 4] that when one is led, by the fraud of another, to make some bargain, or to do some other act which he would not have done except for his reliance upon the good faith of the party who deceived him, he may not only be released from any contract into which he has thus been induced to enter, but he may also have an action in tort for deceit against the deceiving party, and recover damages.

Essentials of Deceit.

To maintain this action of deceit, certain things must be proven. It must be shown that the false representation was in regard to facts *material* to the case; that it was made *by the defendant*; that he *knew its falsity*, and *intended that the plaintiff should act upon it*; that the plaintiff was *ignorant of its falsity*, *believed it true*, and *did act upon it, sustaining damages thereby*. And the damages must be such as are susceptible of pecuniary measurement.

Concealment.

The deceit may be practiced by *failure to disclose* matters which one is *bound* to disclose, as well as by false statements.

It must be remembered, however, that one must always be on his guard when dealing with the owner of an article who is trying to sell it, for his statements of opinion as to its value, or perhaps even his direct

statements of value, though they may be absolutely false, containing all the elements of deceit, are considered to be mere "dealer's talk," which should deceive no one. Such statements, therefore, are not actionable. Remember the maxim "*Caveat emptor.*"—let the purchaser beware.

Buyer's Duty of Inspection.

One cannot complain that he has been deceived, *if means of information were plainly open to him*, and he failed to avail himself of them.

Thus if the goods which he is buying are open to inspection, he is bound to examine them before purchasing; unless, indeed, the seller makes direct statements as to their condition, with the *purpose of preventing* the purchaser from making such examination; or unless it was distinctly understood by both parties at the time of the sale, that the buyer relied entirely on the seller to make selection of a certain kind of goods for a certain definite purpose. [See Warranties, Chapter 17.]

Due Care and Prudence.

If the party who is deceived allows himself so to be by relying upon information which, in its very nature, is *unreliable*, he cannot maintain an action therefor. He must have used *due care and prudence*, in ascertaining the facts for himself, or in deciding whether the information given him by the other party was reasonably likely to be true. One cannot allege ignorance when it is owing to his own fault. If one signs a paper without reading it (or if he cannot read, without causing it to be read to him by some person whom he has reason to trust), he is bound by all the contents

of the document, ignorant as he may have been of them, and though grossly deceived into believing that he was signing a very different paper. Such a person can have no action for deceit. The *test* as to the care which one should use, is that which a *reasonably prudent man would exercise* in such a situation.

Slander and Libel.

Slander is spoken, and libel is written or printed defamation of another's reputation. An action of tort may be maintained to recover damages for slander or libel, by the injured, against the injuring party.

Kinds of Slander.

To make spoken words so defamatory as to constitute legal slander in themselves, independent of the injury caused by them, they must have accused the plaintiff of the *commission of a crime* for which he could be legally indicted and tried; or they must have been words accusing the plaintiff of some *misconduct* in his business, office or occupation, which would naturally tend to injure him therein; or words charging the plaintiff with having a contagious and disgraceful *disease*; or words tending to *disinherit* him, as by calling him a bastard.

Libel Defined.

A libel is any *written, printed or pictured matter* which censures or ridicules any individual or the government. It is not restricted to any special classes of accusations, as is the case in slander.

Slander Per Se.

Any libel, or any slander of the four kinds already named, will give the right of a civil action for dam-

ages to any party against whom such libel or slander may be directed, without the necessity of proving that he sustained any particular damage therefrom. Such words are *actionable per se*—that is, considered by themselves.

Special Damages.

But any other slanderous accusation, outside of the cases thus specified, may also give a right of action to the party whom they injure, if he can prove affirmatively that the slander was *malicious, and that he did sustain special injury and damage to his reputation, as its direct and natural result*. That he was led to *fear* injury to his character by the slanderous words, and that the fear made him ill, is not such special damage as will give a right of action.

Publication Necessary.

If the slander or libel, of whatever nature, be addressed *to the plaintiff only*, and not in the hearing, or to the knowledge of any third person, it gives no right of action, however great the injury to his feelings, because his reputation cannot be injured thereby. Thus the most libelous letter, sealed and sent with due care to the person whom it unjustly accuses, is not actionable, because the libel was not *published*—that is, made known to some portion of the public.

Truth, as a Defence.

It is at common law, and probably in most states, a sufficient defence to an action for slander, to prove that the accusation complained of was *true*; for a person's reputation cannot be injured by having the truth spoken of him. The same defence was good at common law against an action for libel also, but it

is pretty generally held now that the truth is no defence in such case, if the plaintiff can prove that the defendant was actuated by a *malicious motive* in publishing the libel.

To set up in justification of slander or libel that one *believed* the accusation to be true is no defence whatever, though it may sometimes be pleaded in mitigation of damages.

Privileged Communications.

Not every slanderous statement concerning a person will give him a right of action; for people are justified in making such statements under certain circumstances. Thus all persons concerned in the trial of any criminal or civil case in any court of justice, including judge, jury, lawyers, witnesses, and parties to the suit, are *absolutely protected* in the utterance of anything relative to the case on trial.

Newspapers are protected also in reporting trials, if they confine themselves strictly to reporting facts, without making any comments of their own, and if they make the report sufficiently full to give a fair and adequate idea of both sides of the case.

As to Malice.

There are many cases, not sufficiently important to be given special mention here, in which it is absolutely essential for the maintenance of an action, to prove that the slanderous statement was *made with malice*—that is, with the intention of doing an injury. In the absence of such proof the statement is privileged. The more important classes of these privileged communications may be mentioned.

Confidential Relations.

All parties who hold mutual relations which are necessarily of a *very confidential nature*, as parents and children, business partners, attorney and client, are justified in making statements to each other which may be of importance to one or both, concerning the character and reputation of third persons, if these statements are made honestly and without malice, even though they may turn out untrue.

Defence of Reputation.

One is always protected in making statements concerning another which may be *necessary to defend one's own reputation* which has been attacked, even though such statements prove false.

Answers to Inquiries.

All communications honestly made *in answer to proper inquiries* propounded by proper persons, are also justifiable. But not every inquiry is proper; nor should every person who may ask, be answered. Thus a lady is justified in replying in good faith to the inquiries of another lady concerning the character of a servant of the former, whom the latter thinks of hiring, even though the statements are in reality false. But she would not be justified in making the same false statements to a lady who has no idea of engaging the servant; for mere curiosity or interest does not excuse either questions or answers.

This indeed, is a safe test to apply when in doubt as to the propriety of replying to questions concerning the character of a third person. If one knows, or has reason to know, that the inquirer is actuated solely, or mainly, by curiosity, he replies at the risk

of laying himself open to an action for slander, should his statements prove incorrect and damaging.

Repetition of a Slander.

It should be remembered that one can never set up in defence to an action for slander or libel the fact that he merely repeated statements which he had received from another. Even if one says, after giving the story, "So and so told me; I don't know anything about it; I don't believe it is true"—he is not thereby justified, but may be sued and obliged to pay damages for thus publishing the slander.

In short, it is unlawful to make a false statement concerning another, on whatever authority, and whether with or without belief in its truth. *Absolute knowledge of its truth* is the only justification which can be presented, unless the communication is privileged, as already stated.

Malicious Prosecution.

It is a tort, giving a right of action for damages, if one *maliciously* causes another to be arrested and tried for a crime which the former party *knows* the latter did not commit. So if he *supposes* that the accusation is true, but upon insufficient ground to make it reasonably probable, an action lies against him.

Also if one institutes, or causes to be instituted, *civil proceedings* against another, acting maliciously, and without any reasonable grounds for believing that the suit is a just one, an action for malicious prosecution will lie against him.

Essentials.

This action must be brought after the suit or trial thus falsely instituted has been *terminated*, either by a

judgment in favor of the defendant, or in some other manner that is legally final.

False Imprisonment.

It is likewise a tort to *imprison* another, or to put *any restraint* on his personal liberty, unless by due process of law and under its authority.

CHAPTER XL.

TORTS, CONTINUED.

Assault and Battery—Malice Not Essential—Recovering Property—Self Defence—Master's Loss of Services—Father's Loss of Services of Minor Child—When Mother May Sue—Notice of Relation Essential—Father's Right of Action for Seduction of His Daughter—Need not Prove Actual Services of Minor—Woman's Right of Action—Husband's Right of Action—Trespass—Trespass to Realty—Waste, etc.—Need not Prove Damage—Justifiable Entry upon Land—Entry by License of Law—Unnecessary Damage—Conversion—Direct Conversion—Constructive Conversion—Right of Possession Essential—Infringement of Patents—Infringement of Copyrights.

Assault and Battery.

Assault and battery have already been defined and considered as crimes. [See Chapter 37.] They come oftener for consideration before the courts of civil procedure, however, action being brought by the injured party to recover damages from the one who makes the attack.

Malice not Essential.

It is not necessary to prove any malice in the de-

fendant. If he was merely *negligent*, and thus committed the wrong unintentionally, he is equally liable therefor. Thus if one handles a pistol without due care, and it is discharged and injures another, the latter has an action for assault and battery against the former.

Recovering Property.

An assault and battery may be committed in the attempt to *take one's own property forcibly* from another. If you find a thief *in your house* or stable, you are justified in attacking him; and in saving your property by wresting it from him. But if the thief carries off your property—your horse for instance—and you *meet him next day* riding the animal, and endeavor forcibly to recover possession of it, he may sue you for assault and battery. You can have recourse to legal process to recover your property, and should not attempt to take the law into your own hands.

Self-Defence Justifiable.

As has already been stated, it is a sufficient defence to such an action, to prove that one only *acted in self-defence*, inflicting *no greater injury* than was necessary for that purpose.

One may use such force as is necessary in defence of his *family or servants*, as well as of himself and his property; and he may lend his aid in *quelling a public riot or fight*.

Master's Loss of Services.

When a servant is attacked and injured, not only the servant, but also the master who is *entitled to his time and services*, may have an action against the party who inflicts the injury.

Father's Right of Action.

So if a minor child is injured, the father may sue the guilty party for the damages caused by *loss of the child's services*—the father having a legal right to demand such services. But *the mother*, not being legally obliged to support her children, even when the father is dead, is not entitled to demand their services and *cannot sue* for their loss. [See further as to father's duty, Chapter 29.]

When Mother May Sue.

If a mother is appointed legal guardian of her minor child, she becomes entitled to his services, and may sue for their loss. So if she is *actually receiving services* from a child at the time of the *injury*, she has a right of action, on the principle that any master who is in the receipt of gratuitous services, may sue for their loss quite as much as though he were paying for them. This is true whether the child be above or below the age of majority, and whether it be a boy or a girl.

Notice of the Relation Essential.

To make one liable to a master, or parent, for loss of services of a servant or minor child, the defendant must probably have had *notice that such a relation existed*, because one is held responsible for the consequences of his acts, *only so far as he could naturally and reasonably have foreseen their effects*.

So if one injures *a man* without any knowledge, or reason to know that he is another's servant, the master has no right of action—though of course the servant has. But in regard to *children*, it is held that one must reasonably suppose them to belong to somebody, and is therefore responsible to their father

or mother in some instances as already suggested, if he injures them.

Seduction.

The father's right of action for the loss of his child's services is the ground upon which he can recover damages *for the seduction of his daughter*. The action only arises, therefore, when her health is so injured that she is *unable to work*.

If the injury to her health is caused by *distress of mind*, no right of action accrues, for the loss of services must be *the direct, physical result of the defendant's unlawful conduct*.

Need Not Prove Actual Services.

It is not necessary to prove that the father was in *actual receipt of any services* from his minor daughter before, or at the time when the injury was sustained. She may even have been living away from home. The fact that he, being her father, had *the right to claim her labor* is enough; and this right continues during the child's minority, unless the father emancipates her, binds her out to service, or the law takes her from him.

If the daughter is over twenty-one years old, the father has the same right of action; but he must then prove that she was living with him at the time of the injury, and rendering him *some service*, even though it may have been no more than presiding over his table.

Mother's Right of Action.

As in regard to loss of services of a child by assault and battery, so in cases of seduction, the mother has a right of action when she has been appointed

guardian, or when the daughter, whether of age or not, is actually rendering services to her at the time of the injury. But if the daughter is away from her mother when the wrong is committed, the latter has no right of action—unless, as guardian, she has a legal claim on the girl's services—even though she returns to her home in ill health, causing the mother much expense and trouble.

Woman's Right of Action.

In some states, though not at common law, the woman herself has a right of action for her own seduction, if she was previously of good character. [See Abstracts, Title "Miscellaneous."]

Husband's Right of Action.

A husband may have the same or a similar right of action for the loss of *the services and the companionship of his wife* against any person who causes her to leave him. Also against any one, except her parents, who harbors her in his house, knowing that she intends wrongfully to desert her husband. But this last action is not now of much practical importance. [See Chapter 38 for seduction as a crime.]

Trespass.

The law *protects the property* of every individual as well as his person and character, and one who interferes with his right to it by unlawfully entering upon his land, or appropriating his personal property, commits a tort, for which he can be compelled to respond in damages.

Trespass to Realty.

Any one who is in possession of a house or land,

whether as owner or lessee, can sue another who *wrongfully enters* into the house or upon the land. Even one who is himself wrongfully in possession, may have an action against any one else who enters upon the land with no better right than his own.

Thus if a lessee remains in possession of a house after the term of his lease has expired, having, therefore, no real right to remain, his lessor may enter and take control of the premises at any time; but until he does so, the party in possession may sue *any third person* who wrongfully enters upon the premises.

As to Waste, etc.

If one has not only wrongfully entered upon land, but has also *injured the property* by committing waste or otherwise, damages for such injury may be recovered in the same action. [See further as to Waste, Chapter 20.]

So if one has wrongfully remained in possession of property for some time, and has meanwhile taken and used, or sold, the crops and other produce, the value of these "mesne profits," as they are called, may be recovered by the party who was rightfully entitled thereto, either in the action brought to recover possession of the land, or in a separate action.

Need Not Prove Damage.

It is not necessary that any damage be done, in order to make a person who enters upon land without permission, liable in an action of tort for trespass. He is a trespasser *merely by going upon land or entering a house*, unless he be justified in so doing by the consent of the party in possession, or by license of law.

Justifiable Entry.

Of course it is easy to see that one who *allows* another to enter upon his land, or who invites him to do so, either expressly or impliedly, cannot afterward turn round and sue him for trespass; it will not be necessary to go into this point at greater length. [See further as to trespassers and entry by implied and actual invitation next Chapter.]

Entry by License of Law.

The cases in which an entry is justified by license of law are several, of which the most important is that class where the law *commands a sheriff to enter* and take possession of property.

All hotels, shops, stores, warehouses, and all cars, coaches, boats and other vehicles which are run for the benefit of the public by "common carriers," are declared by law to be open to any who may choose properly to avail themselves thereof, if they are in a fit condition to be received; and no action of trespass can be brought for such an entry which is made by license of law. [See further as to common carriers, Chapter 16.]

When one person owes a debt to another, *the creditor may enter the debtor's premises* to demand payment. So if one sells goods to another, which are on the premises of the seller, *the buyer may enter to remove them*, unless other arrangements for their delivery have been specified. So when one's goods have, without his fault, gotten upon another's land, *the owner may enter to get them*.

As a familiar instance of the last rule, when apples fall from a man's trees upon his neighbor's land, he may enter upon such land to recover them; but if,

in so doing, he *does unnecessary damage* to his neighbor's property, as by trampling on his flower-beds, he will be liable in an action for such damage.

Another class of cases where the law licenses an entry on another's premises, is when *necessity compels it*, the party entering not being in fault in the matter; as when one is pursued by an enemy, or a wild animal, or is in danger of being trampled upon by a runaway horse.

Unnecessary Damage Not Justifiable.

In all cases where an entry on another's premises is permitted either by consent of the owner or by license of law, *no unnecessary damage is justifiable*.

In many of the cases where a simple entry is unjustifiable, but no injury of consequence to the premises is done, the trespasser is liable to an action, but the plaintiff would recover mere nominal damages—"one cent" being the amount, perhaps. Still, "a man's house is his castle," and no one is justified in entering it, except by right of some kind.

Conversion.

Personal property also belongs exclusively to its owner, no one else having a right to assume any control over it tantamount to an act of ownership. By doing so, one makes himself liable to the owner in an action of tort, for the conversion of such property to his (the wrong-doer's) own use.

Conversion may be defined as *any unauthorized assumption and exercise of the right of ownership*, over personal property of any kind belonging to another, to the alteration of its condition, or possession, or otherwise *to the exclusion of the owner's rights*.

Direct Conversion.

Direct conversion is the *actual appropriation* of another's property for one's own benefit, or for the benefit of a third person ; or the destruction, or essential alteration of the property itself.

Constructive Conversion.

Constructive conversion consists in the commission of any act in relation to another's property which is considered, in view of the law, *to amount to an appropriation* of the property.

Right of Possession Essential.

The plaintiff must have had the *right of possession* of the property at the time of the conversion, in order to maintain the action. If he leased the property to another, he thereby lost his right to possession, and cannot sue for its conversion by a third party. But if it was in his own *actual* possession, or if he had merely *loaned* it to another, retaining the *right* of immediate possession, he can maintain the action.

A *special property* in goods is sufficient to enable the owner thereof to sue for their conversion. Thus, although the owner of the general property in goods which have been leased to another cannot maintain an action for their conversion by a third party, the party *to whom they are leased*, and who thus has a special property in them, may maintain the action. He may maintain it even against the owner, if the latter interferes with his special property. Thus in the case already considered, if the owner of goods which he has leased to another, takes them away before the lease expires—without fault of the lessee—

the latter may have an action against the former for their conversion.

If the defendant came rightfully into possession of personal property in the first instance, a *demand* for it must be made by the owner, and a *refusal or failure* to deliver it by the defendant, before any cause of action can arise.

If one *finds goods*, and takes possession of them in good faith, intending to return them when the owner shall appear, prove his right and demand them, he is not thereby guilty of conversion. [See further as to title by finding, Chapter 16.]

Infringement of Patents or Copyrights.

The infringement of a patent or a copyright is a tort. [For definition of patent and copyright see Chapter 16.]

As to Patents.

An infringement of a patent consists in the wrongful making, using or vending of the patented thing by any one other than the patentee, his heirs or assigns, or any party to whom he has given a valid license to make, use or vend the patented thing.

If one supposes that he has himself made an invention, and succeeds in obtaining a patent thereon, and then proceeds to make, use or vend it, he may still be liable in an action for infringement by any party who may have previously obtained a patent for substantially the same invention.

It must be remembered that any making, using, or selling an article that has been patented, without due authority to do so from the proper party, is an infringement; it is not necessary that any two of the forbidden acts should combine.

As to Copyrights.

One infringes a copyright who, without consent of the owner obtained *in writing signed by two or more witnesses*, prints or publishes any copyrighted book or part thereof; or knowing the same to be wrongfully printed or published, sells or exposes to sale any copy of such book.

An infringement of a copyright may be effected, not only by an *actual verbatim reprint* of the whole or part of a book, but also by imitating, though disguised by some changes and interpolations, the whole or a part of it, or probably even an abridgement of it.

The law declares that every infringer of a copyright shall forfeit every copy of such book in his possession, and be liable in damages besides.

In this country one may translate a copyrighted work into a foreign language, unless the right of translation has been reserved by the author.

CHAPTER XLI.

TORTS, CONCLUDED.

Negligence—Test as to Negligence—Omission of a Duty—Must Prove Direct Injury—As to Specialists—Degree of Diligence Required—Contributory Negligence—Duty of Keeping Premises in Repair—As to Trespassers—Entry by Implied Invitation—Entry by Actual Invitation—Negligence of Servants or Agents—Negligence of Child—Negligence of Railway Employés—Care Required from All Principals—Responsibility of City or Town—As to Contractors—Injuries Sustained by Servants—Wrongful Act of Plaintiff—Traveling on Sunday—Negligence of Parents.

Negligence.

One may make himself liable to an action for damages by his wrongful negligence as well as by his wrongful acts. This class of torts is very extensive and very important.

Test as to Negligence.

The test to be applied in every case as to the presence or absence of negligence is as follows: *Would a person of ordinary caution and prudence, similarly situated toward the matter in question, have acted as the defendant did?* If he would, then the defendant was

not negligent. If he would have acted more cautiously, prudently or skillfully than the defendant did, then the latter was negligent.

Omission of a Duty.

One may be negligent, not only by doing an act less cautiously or skilfully than the ordinarily prudent man would have done it, but by *omitting to perform some duty* owed to the public or an individual, which the prudent man would have performed.

Must Prove Direct Injury.

No action can be brought unless the plaintiff has sustained *injury which was the natural and probable result of the defendant's negligence.*

As to Specialists.

An ordinarily careful and prudent person will not represent himself to the public as a specialist in any line—for instance, as an oculist, a watchmaker or a dressmaker—unless he or she has made a proper study of the particular branch of business designated. Therefore if one who has not made such a study advertises for, or otherwise seeks public patronage in any particular business, obtains it, and performs it injuriously—as for instance, if he harms the eye or the watch, or wastes valuable dress material by improper work—such a party has thereby been guilty of negligence and laid himself liable in damages.

Degree of Diligence Required.

The degree of diligence or skill required in the performance of labor or other duties, is in proportion to the difficulty, delicacy and value of the thing to be done, and also to the skill which the party claims to

possess. The *utmost* diligence and skill is to be expected only from one who represents himself to be an *expert*.

Thus a physician is liable for negligence only when he fails to exercise such skill as a *prudent physician of ordinary ability* would have exercised in a like case.

So all agents, servants, trustees and others, are bound to have a *fair knowledge* of the business intrusted to them, and to exercise the care and skill in the performance of their duties which prudent persons thus situated, would exercise. No more than this can be expected.

But if one carries a watch to a blacksmith for repairs, or gives valuable dress goods into the hands of an ordinary seamstress who knows nothing of cutting, with orders to cut and make a dress, only a very *slight degree of care* can be expected or demanded from these persons, if they held out *no false inducements* by which to secure the work.

It has been repeatedly held that *telegraph companies* are bound to furnish operators who have a fair knowledge of telegraphy, and to take due care in the receipt, transmission and delivery of messages.

Greater care is required from *common carriers and inn-keepers* than from other classes of people, as has been already shown. [See Chapter 16.]

Contributory Negligence.

But neither in these nor in other cases, is one liable for an injury which is in reality caused not by his own negligence, but by that of the party injured; for he, as well, is *bound to exercise the caution which a prudent person would exercise* under like circumstances; and failing to do this, he cannot hold another re-

sponsible for the result of his own carelessness, or "contributory negligence," as it is called.

Duty of Keeping Premises in Repair.

It is the duty of all occupants of premises to keep them in *due repair*, so that no one who comes rightfully thereon may sustain injuries.

As to Trespassers.

A trespasser, who has no right upon the premises, cannot hold the proprietor liable for any ordinary misfortune which may result from his going there without authority. But even a trespasser has a right to be protected from savage dogs and spring guns, and if such defences are employed, the dog should be chained—unless possibly in the night—and a notice of warning should be posted in some prominent part of any premises in which spring guns or man-traps are hidden.

Entry by Implied Invitation.

One who enters on premises by implied invitation, as a customer at a shop or store, has a right to be protected against all danger of which the proprietor had *previous notice*.

Thus if an elevator well in such an establishment is left open and unguarded, and a customer falls in and is injured, he can recover damages therefor, because the proprietor or his servants were aware—or should have been aware, of the danger. But if the accident occurs in a part of the establishment into which customers have no right to go, no duty toward such customers has been neglected by the proprietor, and no action lies against him, the customer being guilty of contributory negligence.

Entry by Express Invitation.

And if a duty to exercise care exists toward customers, because they are on the premises by virtue of a general invitation to the public to enter, the duty is still stronger, and greater care is required, in cases where one is expressly invited to come upon the premises for any purpose whatever.

Negligence of Servants or Agents.

One is not only liable for the injuries caused by his own negligence, but also by that of his servants or agents, while they are engaged in the *performance of his business*. To decide whether or not they *were* thus engaged at the time of the injury, is often a nice point.

Thus, if a driver of a carriage or wagon, while engaged in carrying out his employer's orders, runs over a man by negligent driving, and injures him, the employer of the driver is responsible in damages. And this is true even when the agent had made an unauthorized detour from his direct course, for his own pleasure, when the accident occurred; for he is still out on his master's business. But if, *after the day's work of the driver is completed*, he takes the wagon, with or without his employer's permission, and drives off on his own business or pleasure, and he then runs over a man, only the driver and not the employer, is liable, for he is at that time not acting as the agent of a principal at all.

Negligence of Child.

It has been stated in an earlier chapter that a father is not liable for the damage caused by his son's act in throwing a stone through a window. This is true, the boy only being responsible for the act, if he

throws the stone maliciously, or accidentally while at play. But if your neighbor tells his son to stone a stray cat out of his back yard, and in acting upon these directions a stone breaks your window, or hits and injures you, the father is responsible for the damages just as if he had thrown the stone himself, for the boy acts as his father's agent.

Responsibility of Railway Companies.

This liability of principals for the negligence of agents is a very important matter, for in a large proportion of the cases where damages for injuries to person or property are claimed from wealthy corporations or business firms, such injuries were caused by the negligence of the defendant's servant, instead of his own. Thus in railway accidents, the principals who own and run the road, receiving the profits therefrom, are held responsible for the results of injuries caused by the *carelessness or ignorance* of the conductor, engineer, switchman or other employé. All common carriers are held to *a great degree of care* both over passengers and property. [See further as to responsibility of common carriers, Chapter 16.]

Care Required from all Principals.

Every person should always bear in mind that he or she may be held responsible for the wrongful acts of his or her servants resulting in injury to others, and should exercise the greatest care in giving strict orders, and in seeing, also, that such orders are obeyed; for one is not relieved from responsibility merely by telling his servant to do no wrong.

For instance, if there is an elevator in your building, and you warn the person who has charge of it

to close and latch all the gates, but he fails to do so, and some one who is rightfully in the building and who is himself in the exercise of due care, falls into the well and is injured, you are just as much responsible as though you had given no such directions.

So if you engage a man to throw the snow carefully from the roof of your house, but he is careless, and some one passing below is injured, you are responsible, unless the injured person willfully failed to heed the warning of another man whom you had also engaged to stand below and give notice of danger to passers-by, thus being himself guilty of contributory negligence.

Responsibility of City or Town.

A town or city, as well as any other corporation, is responsible for the wrongful acts of those who are really its servants or agents, but *not for those of its officers*; and this term includes all who are *elected or appointed* to any office, such as firemen, policemen and others. So if a fire engine runs over a citizen, or a police officer clubs him without cause, he has no remedy against the city, but only against the driver of the engine, or the police officer himself.

As to Contractors.

If one hires a contractor to do work, taking proper care to select a reliable man who understands his business, the *employer is not responsible* for the wrongful acts of such *contractor or his servants*, because they are not really under the orders of the employer. He intrusts the work outright to the contractor, who can do it as he pleases, and who is absolutely responsible in every way, both for his own acts and for those of the men who work under him.

Injuries Sustained by Servants.

It should be noticed that a servant may recover damages from his employer for any injuries resulting from lack of due care on the part of the *employer himself*; as for instance, the use by him of unreliable machinery; but he *cannot* hold his employer responsible for the careless acts of a *fellow servant*.

Thus if, through the negligence of workmen engaged in putting up a building, some of the stone or lumber falls to the ground, and injures both another workman and a passing stranger, the *stranger* may recover damages from the party who hired the men to do the work, but the injured *workman* cannot so recover. His only remedy is against the workmen whose negligence directly caused the injury, and as they are often pecuniarily irresponsible, he has practically no remedy. The reason given for this rule of law is, that when men engage to work, they accept all possibilities of injury from their fellow servants, impliedly agreeing not to hold their employer responsible therefor.

For still greater security from such responsibility, employers frequently introduce a clause in their contracts with workmen, expressly exempting themselves from liability for injuries resulting either from any negligence of the employer himself, or of fellow servants; but the injustice of such a stipulation has led to the passage of a statute in Massachusetts—and perhaps some other states may have followed the example—forbidding employers thus to exempt themselves.

Employers may be liable for injuries sustained by their servants through the negligence of fellow servants, if they (the employers) had previous notice that the latter servants were unfit for such employment,

and failing to heed the warning, still kept the men in their employ.

In England and some states, the common law rule given above has been changed by statute, making the employer responsible to servants injured while in his employ by the negligence of fellow servants, in the same degree as to strangers thus injured.

Defences.

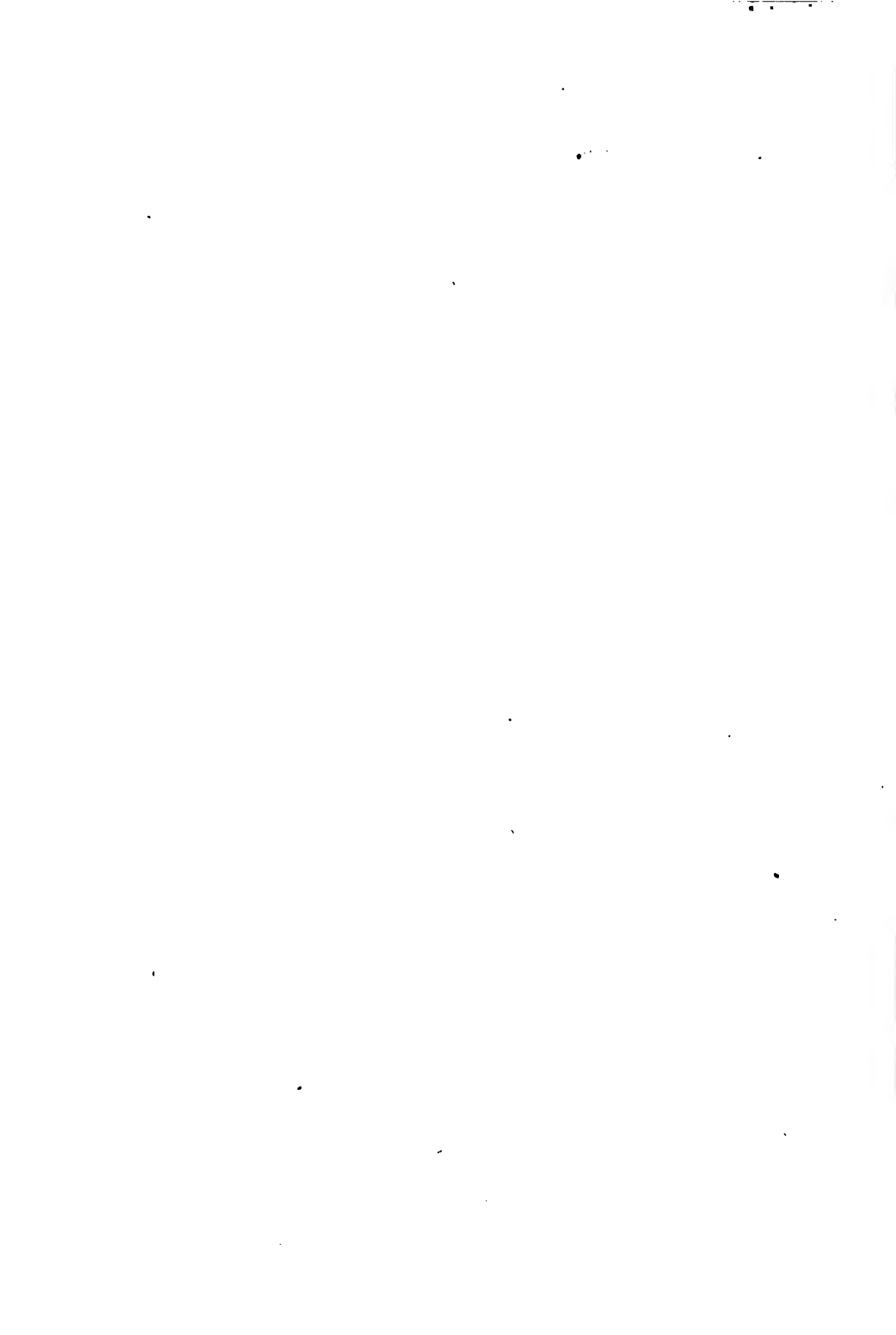
Not only is contributory negligence a good defence, but it is also sufficient to prove that the defendant was himself guilty of *some other wrongful act* at the time when he sustained the injury complained of, providing the injury is one that could not have occurred had he not been thus guilty.

Sunday Travel.

It is on this ground that it has been held in some states, especially the older ones, that one who is *traveling on Sunday* (not by necessity, or for charity) cannot maintain an action for injuries caused by the bad condition of the roads, or other negligence of town or individuals. In most states however, this rule does not now prevail, the wording of the statute prohibiting Sunday travel not being broad enough to warrant it.

Negligence of Parents.

In the case of a child who is injured, and who is too young to be himself guilty of contributory negligence, *that of his parents or guardians* will be a good defence to any action for the injury, whether brought in the name of the child, or in that of the parent relying upon the relation of master and servant. [As to this relation, see preceding Chapter.]



ABSTRACTS OF STATUTES

—IN—

All the States and Territories.



CONTENTS.

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AUTHOR'S NOTE.

(By reading the foregoing chapters with a fair degree of attention, a reliable idea may be gained of the fundamental principles of *common law* on the most important subjects arising in business and domestic life. But for practical application of this knowledge, it is also necessary to be familiar with the *statutes* in one's own state, by which these common law rules have been varied or superseded. Every one should have them in his own possession, or easy of access, but imperfect indexes and ambiguous language may make these books troublesome works of reference. For the sake of convenience, therefore, I have selected a number of important subjects, and have carefully compiled the laws concerning them in the various states and territories, wording them as briefly and simply as I could safely do. No time or trouble has been spared in the attempt to make these Abstracts absolutely correct, and their value will be realized by all who know the difficulty of getting reliable information on these matters, whether in their own states or elsewhere; while others who have vainly searched for some bit of information in the bewildering mazes of a dozen volumes of session laws, will agree that to these Abstracts, if to no other part of the book, the title "*Law Made Easy*" applies.

Furthermore, one need not fear that the law given in the Abstracts will get old, so that he may not safely rely on it. This thought troubled me in no small degree when first planning the book. Legislatures are continually at work all over the country, building up, tearing down, altering and repairing the structure of statutory law, and no attorney can safely say what

is law on any particular point in any given place, without having consulted the latest issue of statutes in the state named. But my scruples have been entirely set at rest by the following arrangement which my publishers have generously authorized me to make with all who purchase the work. I shall thoroughly examine the new issues of statutes in every state and territory, as often and as soon as they are given to the public, and any changes which may occur in any of the matters herein contained, will be carefully noted, and published in annual Supplements, which may be obtained from year to year at mere cost of publication, probably from ten to twenty cents each. Thus the strongest objection which can be urged against a work of this nature is entirely obviated.

As I have said, it has been my aim to use simple language, but in some cases it has seemed best to preserve the wording of the statute itself. If expressions more or less technical occur occasionally in consequence, they are all explained elsewhere, either in the glossary, or in the text, where they may be found by means of the index. Both glossary and index are very full, but a word may be missing here and there, and I shall be greatly obliged to any reader who will inform me of any such omission, or of errors in any part of the work, which will be corrected in later editions.

It has not been at all an easy matter to make the selection of subjects for the Abstracts, and after all the care with which I have chosen, it may possibly occur that the first thing one seeks may not be found at all. If it happens so, I can only ask the reader to remember the nine hundred and ninety-nine other matters in which the book may serve him.

L. J. R.)

ALABAMA.

Collection of Debts.

Arrest.—There is no arrest or imprisonment for debt.

Attachment.—An attachment may be put on the property of a debtor whether the debt be then due or not, also on that of one against whom there is any money demand of definite amount or who is liable in damages for breach of a contract; if the plaintiff can make affidavit that the defendant has absconded, or secreted himself, or resides out of the state, or is about to abscond, secrete himself, or remove himself and his property out of the state; or has fraudulently disposed of his property or is about to do so; or that he has money, property or effects liable for debts, which he fraudulently withholds.

Garnishment.—There is a garnishment process by which a creditor can compel payment of his claim from a debtor of his debtor.

Exemptions.—The personal property of any resident of this state, to the value of one thousand dollars, to be selected by himself, shall be exempted from sale on execution or other legal process for the collection of debts. Also all wearing apparel of the family, family books and portraits, provisions for twelve months' use of family, and some other incidental exemptions. Also the wages, salaries, or compensation of laborers and all employés for personal service, to the amount of twenty five dollars, per month.

A *Homestead* is exempt, not exceeding one hundred and sixty acres of land and buildings thereon to the value of two thousand dollars, owned and occupied as a dwelling, to be selected by the owner; or in lieu thereof, with any lot in a city, town or village, the dwelling and appurtenances thereon, said lot not to exceed two thousand dollars in value.

Interest.

The legal rate of interest is eight per cent. Any higher rate is usurious, and on such a contract, only the principal without any interest, can be recovered.

Insolvency.

There are no insolvent laws except those regulating the administration of the insolvent estates of deceased persons. An insolvent debtor may, however, make a voluntary assignment of his property for the benefit of all his creditors; but he cannot prefer any special claims in so doing.

Statute of Limitations.

All actions to recover judgment-debts must be brought within twenty years from the time when such debt accrued; actions for the recovery of real property, and actions founded on contracts or other writings under seal, within ten years; on promises and writings not under seal, actions for the use and occupation of land, for trespass on land, or for conversion of personal property, six years; to recover money due on open and unliquidated accounts, three years; for assault and battery, false imprisonment, malicious prosecution, criminal conversation, seduction, breach of promise, slander or libel, one year.

Wills.

Any person of sound mind, married or single, may dispose of his or

her real property by will, at the age of twenty-one; of his or her personal property, at eighteen. Two subscribing witnesses are required. Nuncupative wills may be made of personal property to the value of five hundred dollars.

The marriage of a woman revokes her will previously made.

Claims against insolvent estates of deceased persons must be filed within nine months after letters of administration granted. Claims against solvent estates must be filed within eighteen months after letters granted, or after the claims accrue.

Descent and Distribution of Property.

The real and personal estate of persons who die without leaving a will, descends, after payment of debts, charges for settlement of the estate, and widow's dower, as follows:

To the children of the deceased or their descendants, in equal parts; when there is no child, or only one child, the widow takes one-half of the personal property; if more than one, and not more than four children, she takes a child's part; and if more than four children, she takes one-fifth of the entire personal estate. If there are no children or their descendants, the estate descends to the brothers and sisters, or their descendants, in equal parts. If there are no children or their descendants, no brothers or sisters or their descendants, then to the father, if living; if not, to the mother. And if none of these, then to the next of kin in equal degree, in equal parts. If no relations, then to the husband or wife, if capable of taking; and if no relations and no husband or wife, the estate escheats to the state. [For the widow's share in her husband's realty, see "Curtesy and Dower."]

Illegitimate children inherit from their mother in whole or in part, as if born in wedlock.

Curtesy and Dower.

The husband takes one half of the personalty of his deceased wife absolutely; and the use of her realty during his life, unless deprived of it by decree of the chancery court.

The widow's dower attaches to all realty of which the husband had the fee simple or the equitable right thereto, during the marriage. She takes one half such realty, if he dies solvent and without lineal descendants; if he dies insolvent, or has lineal descendants, she takes one third. But if the widow has a separate estate of her own, equal in value to her share in his realty and personalty [See "Descent and Distribution of Property"], she takes no part in his estate; if she has a separate estate of less value, she takes a sufficient portion from his estate to make it equal to the share of his property which would have been hers had she possessed no separate estate.

Divorce.

The court of chancery has power to divorce from the bonds of matrimony, or from bed and board, upon bill filed in chancery by the aggrieved party, for the following causes: Impotency; adultery; voluntary abandonment from bed and board for two years next preceding the filing of the bill; for imprisonment in the penitentiary for two years, the sentence being for seven years or longer; for the crime against nature, committed before or after marriage; in favor of the wife, for habitual drunkenness of the husband, if not existing at the time of the marriage within her knowledge; also for actual violence committed upon her by the husband, attended with danger to life or health, or reasonable appre-

hension of such violence; in favor of the husband, for pregnancy of the wife at the time of marriage and without his knowledge or agency. Divorce for the adultery of the wife bars her from any claim on her husband's estate at his death. Any divorce deprives the husband of all control over the separate estate of the wife.

Upon granting the divorce, the court may give the custody of the children to either parent, having regard to the age and sex of the children, and to the prudence and moral character of the parents.

Married Women.

The real and personal property of a married woman, owned by her at marriage, or afterward acquired by gift, grant, inheritance or devise, is her separate estate. She may dispose of it by will; but she cannot convey it by deed unless her husband joins in the conveyance. This separate estate is liable for necessities furnished for family use.

The husband has the management and control of the wife's separate estate, as her trustee, and he is not bound to account to her or to any one for the rents, income or profits; but neither they nor the estate itself can be taken for his debts. The wife's earnings belong to the husband, unless secured to her by decree of the chancery court. A husband is not liable for his wife's debts contracted before marriage.

A married woman cannot transact business as one unmarried may do, unless by permission of the chancery court. Husband and wife cannot contract with each other for the sale of any property. A married woman's note is not binding.

Miscellaneous.

Age of Majority.—The age of majority is twenty-one years. But a will of personalty may be made at eighteen, and a woman may marry without consent of her parents at eighteen.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of girls below that age, or for rape, is death or imprisonment at hard labor for life, at the option of the jury.

Intoxicating Liquors.—Local option prevails in twenty two counties, an election for or against prohibition being called by the probate judge on the petition of any person who desires to prohibit sales within certain limits of any place. There is also prohibition by special legislation in many other localities. Elsewhere, a license may be obtained on petition of twenty householders, and payment of a small fee. It is forbidden to sell to Indians, minors or habitual drunkards.

ARIZONA TERRITORY.

Collection of Debts.

Arrest.—A debtor may be arrested if about to leave the territory in fraudulent evasion of the debt, or if he was guilty of fraud in contracting it, and in some other cases.

Attachment.—An attachment on the property of the defendant may issue in all cases of contracts for the payment of money, made or payable in the territory and not secured by mortgage, etc.; and in all cases of contract brought against a non-resident.

Garnishment.—A writ of attachment served on a debtor of the defendant or one who holds his property, operates as a garnishment.

Exemptions.—The *Homestead* to the value of five thousand dollars also books to value of one hundred and fifty dollars; family pictures; all wearing apparel; all arms and accoutrements; stoves, spinning-wheels, weaving-loom; pew in church and burial lot; household goods to six hundred dollars; certain domestic animals and feed for them; provisions and fuel for six months; tools of trade, etc., to six hundred dollars; one sewing machine and one musical instrument.

Interest.

There is no usury law. Parties may agree for any rate of interest. When no rate is fixed, interest is allowed at the rate of ten per cent.

Insolvent Laws.

Every insolvent debtor owing three hundred dollars, or more, may go into voluntary insolvency. By petition of three or more creditors, resident in the territory, whose debts accrued in the territory amount to five hundred dollars or more, a debtor may be declared insolvent.

Statute of Limitations.

An action upon a judgment debt rendered in the territory must be brought within five years; on any written contract, etc., executed in the territory, four years; for trespass to real property, conversion of personalty, etc., or action for relief on ground of fraud, three years; on unwritten contracts, judgment debts rendered out of the territory, and written contracts, etc., executed out of the territory, actions for any article charged in a store account, within two years; libel and slander, assault and battery, etc., one year.

Wills.

Two subscribing witnesses are required to all written wills. A married woman of twenty-one years may make a will of all her property. Nuncupative wills may dispose of property to the amount of three hundred dollars; they must be proved by two competent witnesses.

The marriage of an executrix or administratrix terminates her authority. A married woman cannot be appointed administratrix.

Descent and Distribution of Property.

The estate of a deceased person must be inventoried according to certain statutory specifications. Certain property, including a homestead to be selected by the widow, not to exceed five thousand dollars in value, is exempted from administration, and set apart for the use of the widow and minor children. If no children, the widow takes all the community property; if a child or children, they take half, and widow half; and the

same rule applies to the widower on the death of the wife. As to the separate estate, it is shared equally between the children (the descendants of any deceased taking his share) and the widow; or if no children or descendants, all goes to the widow, but for her life only, and at her death, to the father of intestate; or if there is no widow, it goes at once to the father; if no father, equally to mother, brothers and sisters, the children of any deceased taking his share; if no brother or sister, all to mother, to the exclusion of descendants of brothers or sisters; if no mother, to next of kin; if a widow and no kindred, the estate goes in fee to her.

Curtsey and Dower.

Curtsey and dower are abolished.

Divorce.

Causes for divorce are as follows: Impotency at the time of marriage; adultery; extreme cruelty; when the consent of either party to the marriage was obtained by force or fraud; when the woman was under fourteen years of age at the time of the marriage, and the consent of her parents or guardian was not given; conviction of a felony after marriage; habitual intemperance; wilful desertion for one year; and lastly, whenever the judge who hears the cause "decrees the case to be within the reason of the law, within the general mischief the law is intended to remedy, or within what it may be presumed would have been provided against by the legislature, had it foreseen the specific case and found language to meet it." Six months' residence gives jurisdiction.

Married Women.

All property of the wife owned before marriage, and all acquired afterward by gift, bequest, devise or descent, is her separate property. If twenty-one years old, she may have its sole and exclusive control, and may convey her realty without the concurrence of her husband, as if she were unmarried. It is liable for her debts, but not for those of her husband. The system of community property prevails concerning property acquired by either after the marriage.

Married women may carry on business and trade in their own names, by complying with certain formalities required by statute. They may sue and be sued concerning their separate property, as though unmarried.

To secure a married woman's title to her separate property, it must be inventoried, the inventory acknowledged, proved, and recorded in the office of the county recorder wherein the parties reside.

Miscellaneous.

Age of Majority:—The age of majority is twenty-one, but the marriage of a ward of any age terminates guardianship.

Women:—Women who are residents, and have paid school tax or have a child of school age, may vote at school meetings.

Age of Consent:—The "age of consent" is ten years. The punishment for rape is imprisonment for not less than five years, or it may extend to life. The seduction of any female of good repute for chastity, under the age of twenty-one, is punishable by imprisonment from one to five years. The uncorroborated testimony of the person injured is not sufficient for conviction. If the accused has married the injured party, or has made her a *bona fide*, offer of marriage which she has refused, no conviction can be had.

Intoxicating Liquors:—It is forbidden to sell any wine or intoxicating liquor within one mile of any camp-meeting, or to sell poisonous or adulterated liquor, or to sell to Indians.

ARKANSAS.

Collection of Debts.

Arrest.—A debtor who contracted the debt with fraudulent intention, may be arrested if he is about to leave the state after concealing or removing his property out of the sheriff's reach.

Attachment.—Attachment may issue against the property of a defendant who is non-resident, or has been absent from the state four months, or has departed from the state with intent to defraud creditors, or has concealed himself, or has fraudulently sold or disposed of his property, or is about to do so.

Garnishment.—There is a garnishment process by which debts may be recovered from parties owing the debtor, or holding property of his.

Exemption.—The personal property of any resident of the state, not married or the head of a family, in specific articles selected by himself, not exceeding two hundred dollars in value, in addition to his or her wearing apparel, is exempt, except for the purchase money of the articles themselves.

If married or head of a family, articles selected to the value of five hundred dollars, in addition to wearing apparel of entire family, are exempt.

A *Homestead* is exempt to any resident who is married or head of a family, to amount of one acre and value of two thousand five hundred dollars, if a city or town lot; or one hundred and sixty acres with all improvements to value of two thousand five hundred dollars, if in the country. But in no case shall the homestead be reduced to less than eighty acres in country, or one-quarter of an acre in the city, whatever the value. Any homestead may be taken to satisfy claims for its purchase money, for taxes, for specific liens, or laborer's or mechanic's liens for improving it. It cannot be alienated by will from the widow and children.

Interest.

The legal rate of interest is six per cent., but interest up to ten per cent. is valid. Above that it is usurious, and all usurious contracts are entirely void.

Insolvency.

The only insolvent laws are those provided for cases of imprisonment on civil process, or for release of persons imprisoned in criminal proceedings for payment of fine and costs. But a voluntary assignment of property may be made by an insolvent debtor for the benefit of creditors.

Statute of Limitations.

All actions to recover on judgment debts, or on bonds, or other sealed contracts, must be brought within ten years; to recover real property, seven years; on promissory notes and other written promises not under seal, five years; on unwritten contracts, for trespass on land, injury to personalty, or libel, three years; criminal conversation, assault and battery, false imprisonment, or slander, one year.

A new promise, written and signed, or a part payment of the debt, will renew the obligation.

Wills.

Any person of sound mind, of either sex, married or single, may make a will of personalty at eighteen years of age, and of both realty and personalty at twenty-one.

Two subscribing witnesses are required to all written wills. Two witnesses who were present at its making, are required to prove a nuncupative will, by which property to the value of five hundred dollars may be disposed of, and which may be made in the last illness of the testator. An olographic will also may be probated when there is unimpeachable evidence given by disinterested witnesses that the entire body and signature of the will is in the proper handwriting of the testator.

The will of a testator who marries after making it and dies leaving his widow surviving, or leaving a living child unprovided for by settlement or by the will, is thereby revoked. Marriage alone revokes a woman's will.

Children not mentioned in a will, or descendants of children if born and living at the time of the execution of the will and not mentioned in it, take the same share of the property of the deceased which would have been theirs had there been no will.

Non-residents and married women cannot act as executors or administrators.

Claims against the estate of a deceased person must be presented within two years after grant of letters testamentary, or of administration.

Descent and Distribution of Property.

After payment of debts and charges, and setting apart the widow's dower, real and personal property of an intestate descends as follows: To children and their descendants in equal parts; if no children, to the father; if no father, to the mother; if neither parent, then to brothers, sisters or their descendants. If no such relative survives, then to the grandfather, grandmother, uncles, aunts, and their descendants in equal parts. There are some peculiarities concerning the descent of "ancestral" real property, that coming from the father's side going to the line on the part of the father, in exclusion of the mother's line; and that from the mother's side going to her line.

Illegitimate children inherit from, and transmit inheritance to, their mother.

Curtsey and Dower.

Common law curtesy prevails. Common law dower also, with the variation that if there are no children, the widow takes one half her husband's realty for life instead of one-third. She also takes the same proportion of her husband's personalty (one-third in case of children—otherwise one-half) absolutely.

Divorce.

The grounds of divorce are impotency; adultery; bigamy; wilful desertion for one year without reasonable cause; conviction of felony or other infamous crime; habitual drunkenness for one year; such cruel or barbarous treatment or personal indignity as shall render the condition of the applicant intolerable.

The plaintiff must have been a resident in Arkansas one year next before bringing suit. The cause must have occurred in the state; or if out of the state, it must have been a legal cause of divorce in the state where it occurred, or else the plaintiff must have been then a resident in such state; and the cause must have occurred within five years next before bringing the suit. Alimony pending suit, attorney's fees, and alimony after decree, may be given to the wife by the court.

Married Women.

All property, real or personal, acquired by a married woman in any

way, before or after marriage, constitutes her separate estate, free from her husband's debts or control. She may sell, transfer or convey the same as if she were unmarried, except that certain statutory provisions concerning such conveyance must be strictly complied with; and all property held as her separate estate must be properly scheduled and recorded according to the statute, to secure it to her. Her earnings are her separate property.

She may carry on a separate trade or business, make contracts, and sue and be sued in reference to that trade or business, and also in reference to her separate estate. Her estate will be liable for her debts only when they were made with special reference to such liability. The husband may convey property directly to his wife.

Miscellaneous.

Age of Majority:—A woman is of age at eighteen.

Marriage:—Marriage may be legally contracted by a male at seventeen years of age, and a female at fourteen; below these ages it is void.

Testimony:—Husband and wife are incompetent witnesses in any civil action, for or against each other, or concerning any conversation between them during the marriage.

Age of Consent:—No "age of consent" for a woman is specifically fixed. The crime of rape is punishable with death. So also is the crime of administering to any female any potion, substance or liquid with intention to produce stupor or weakness of body, with the intent to commit a rape. The seduction of any woman by virtue of any pretended marriage, or by any false or feigned express promise of marriage, is punishable by fine and imprisonment. The uncorroborated evidence of the female is not sufficient for conviction.

Intoxicating Liquors:—To retail intoxicating liquors, an annual license of four hundred dollars as a county tax and three hundred dollars as state tax must be paid, also certain fees. But manufacturers may sell in packages containing not less than five gallons without a license. For selling illegally, a fine double the amount of the license may be imposed, and each day's selling constitutes a separate offense. A "local option" law also prevails, by which the county court is forbidden to grant licenses in any township or city ward unless there is a majority vote "for license" both in the county, and in the ward or township itself. Where no vote at all is taken on the question in a ward or township, no license can be granted therein. If a majority of the adult inhabitants (including women) residing within three miles of any institution of learning or church-house, petition the county court for prohibition of the sale or giving away of liquors within the said three miles, the court shall order in accordance therewith, and such selling or giving away shall be unlawful for two years thereafter. A practicing physician, who has filed an affidavit that he will prescribe liquors only in actual cases of sickness, for recovery from which he deems it necessary, is excepted from this rule.

CALIFORNIA.

Collection of Debts.

Arrest.—A debtor may be arrested if he is about to leave the state with intent to defraud creditors; or if he has fraudulently converted or embezzled property; or concealed his own or fraudulently disposed of it to prevent its being taken by the sheriff; or where he contracted the debt by fraud. No woman can be arrested in any civil action.

Attachment.—An attachment on the property of a defendant may issue in actions on contract for the direct payment of money, made or payable in the state, and not secured by mortgage, etc.; also against non-resident defendants.

Garnishment.—There is a garnishment process by which claims may be collected from the debtor of a debtor, or one who holds property of the latter.

Exemptions.—Exemptions from execution or forced sale for debt (unless for their purchase-money, or unless the debt be secured by mortgage, lien, or pledge thereon) are the following articles: Chairs, tables, desks and books to value of two hundred dollars; certain specified household furniture, provisions already stored sufficient for three months, three cows and their calves, four hogs and their pigs; farming utensils, two oxen or horses or mules, and harness; seed grain or vegetables to value of two hundred dollars; mechanics' tools or implements; instruments of physician, surgeon, or other professional person, with books, professional libraries and office furniture, etc.; a miner's cabin not exceeding five hundred dollars in value with two horses or other working animals; earnings for personal services rendered within one month before attachment, if necessary for support of family, unless the debt be for necessities of life, when one-half of such earnings may be applied to its payment; life policies of which the annual premium does not exceed five hundred dollars; and some other articles specifically enumerated.

Also a *Homestead* not exceeding five thousand dollars in value, selected by the husband and wife, or either, or other head of a family; or a homestead of one thousand dollars in value belonging to a single person.

Interest.

The legal rate of interest is seven per cent.; but parties may agree in writing upon a higher rate. There is no usury law.

Insolvency.

One who owes debts exceeding three hundred dollars in amount may go into voluntary insolvency by making due application and proof. Upon petition of five creditors, residents of the state, whose debts accrued in the state and aggregate five hundred dollars, a debtor may be judicially declared insolvent.

Statute of Limitations.

Actions to recover real property and judgment-debts must be brought within five years; actions on written contracts within four years; on unwritten contracts, two years; slander, libel, assault and battery, seduction or false imprisonment, one year.

Wills.

Any person of sound mind, either sex, married or single, may make a will of real and personal property, at eighteen years of age.

Two subscribing witnesses are required to all written wills. Olographic wills are valid when properly proved. Nuncupative wills may be made by soldiers and seamen in active service, when in actual contemplation, fear or peril of death; also by those who are in expectation of immediate death from injuries received on the same day as that on which the will is made. Such a will may dispose of property to the value of one thousand dollars. It must be proved by two witnesses who were present at its making, and who were asked by the deceased to act as such. It must be reduced to writing within thirty days, and offered for proof within six months after being uttered.

A woman's marriage revokes her previous will. A man's marriage revokes his if the wife survives him, unless she is provided for therein, or unless it appears by the wording of the will itself that it was his intention not to make any provision for her. Children not mentioned or otherwise provided for, take as they would do if there were no will.

The law against perpetuities forbids the tying up of property for any longer time than the lives of certain persons named, who are in being at the creation of the limitation.

A will giving anything for charitable, religious or public purposes, must be made at least thirty days before the testator's death; and if he leaves any legal heirs, not more than one-third of his property can be given to any purpose of the kind.

A married woman may be the executrix of a will. She cannot be appointed administratrix of an estate; if unmarried when appointed, her authority ceases at her marriage.

Claims against the estate of a deceased person must be presented within ten months after publication of notice by the executor or administrator, where the estate exceeds ten thousand dollars in value; and within four months, where it is of less value.

Descent and Distribution of Property.

The property of an intestate, after payment of debts and expenses of administration, and unless limited by marriage settlements, descends as follows: If a wife or husband survives, and only one child, each takes half; if more than one child, one third goes to the surviving consort, and the rest is equally shared by the children; if no husband or wife, the children share the whole equally. If a husband or wife survives, but no children, such survivor takes half the estate, and the other half goes to the father and mother of the deceased equally, or if either be dead, to the survivor of them; if neither parent, then to brothers and sisters equally, and the children of any deceased brother or sister. If the deceased leaves no husband or wife or children, the whole estate goes to his parents, or to the survivor of them; or if neither, to brothers and sisters, and their descendants. If no children, parent or brother or sister survives the deceased but a husband or wife does, he or she takes the whole; and if no husband or wife or any relative named, the estate goes to the next of kin in equal shares. If no known kindred, it goes to the school fund of the state, unless the deceased was a widow or widower, and a part of all of the estate had been community property, when such portion goes to the next of kin of the formerly deceased spouse.

The above provisions as to inheritance of husband and wife from each other, apply only to the separate property of each. The community property goes at once, on the death of the wife, to the husband, unless some portion thereof may have been set apart by judicial decree for her

support and maintenance, such portion going to her heirs, if not otherwise disposed of by her will. On the death of the husband, one-half the community property goes to the wife; the other half he may dispose of by will, and lacking this, it goes in the same way as his separate estate. Upon the husband's death, the whole community property is subject to his debts, the family allowance, and expenses of administration.

Curtesy and Dower.

There is no curtesy or dower, the system of community property prevailing instead.

Divorce.

Causes for divorce are as follows: Adultery; extreme cruelty; wilful desertion for one year; wilful neglect for one year; habitual intemperance for one year; conviction of felony.

Plaintiff must have resided in the state six months before suit can be brought.

Alimony and expenses of carrying on the suit may be given to the wife. The community property is equally divided between the parties, except where the cause of the divorce is adultery or extreme cruelty, in which case the court may apportion the property in its discretion.

Married Women.

All property owned by either husband or wife at marriage, and all acquired by either after marriage by gift, inheritance or by the will of any deceased person, together with rents, income and profits thereof, constitutes the separate property of each. All property acquired during marriage by either, in any other way, constitutes the common or community property of both. The husband has entire control and management of the community property, and may dispose of it in any way, during his life, without the wife's consent, but not so as to defraud her of her half interest in the proceeds; and upon his death, the widow is entitled to one half of what remains after payment of community debts and expenses of administration.

With such restrictions, as always exist between parties in confidential relations, husband and wife may make contracts and conveyances between themselves.

If an estate is purchased with the funds of the common property, and the title is taken in the wife's name, it remains common property, unless some evidence can be given showing that it was intended as a gift to her; if the words "as her separate property, and to inure for her sole and separate use" are used in the deed, it becomes her separate property. She may sell, convey, mortgage or assign it in entire independence of her husband. If she gives a mortgage upon the common property, it is worthless unless the husband dies first, in which case the mortgage attaches to her portion of the estate.

The separate estate of each is liable for his or her debts, contracted before or after marriage, but not for those of the other party. The community property is not liable for her contracts after marriage unless secured by a pledge or mortgage thereof, executed by her husband. It is liable for her debts contracted before marriage, if she has no separate estate. Her earnings, although community property, are not liable for her husband's debts; and if living apart from him, they are her separate property.

The wife may contract, sue and be sued, in all respects as a single

woman may do, concerning her separate property. Suits may be maintained between husband and wife concerning any business relations between them. Her promissory notes are binding on her separate estate.

The community property and the separate property may be subjected to the support and education of the children of a married couple, in such proportions as the court deems just. If a father is unable to give a child adequate support and education, the mother must assist him to the extent of her ability. The father is entitled to the custody, services and earnings of a legitimate unmarried minor child, but he cannot transfer this right to another, except the mother, without her written consent, unless she has deserted him or is living apart by agreement.

Parents and children are reciprocally bound to maintain each other, to the best of their ability, if poor and unable to support themselves by work.

A husband cannot alienate a homestead, unless his wife joins him in the conveyance.

Miscellaneous.

Age of Majority.—Women are of legal age at eighteen; men at twenty-one. If a woman marries before arriving at majority, the authority of the guardian of her person ceases, but not that of the guardian of her estate. The age at which a valid marriage may be contracted, is eighteen for males, and fifteen for females.

Women.—Women are eligible to all educational offices within the state, except those from which they are excluded by the constitution. They may be attorneys at law. Women who are teachers in the public schools shall in all cases receive the same compensation as is allowed male teachers for like services, when holding the same grade certificates.

Testimony.—Neither husband nor wife can be compelled to testify for or against the other unwillingly; nor can either be examined as to any communication made between them during the marriage. But such testimony may be given in any civil proceeding by one of them against the other, or in any action for a crime committed by one against the other.

Age of Consent.—The "age of consent" is ten years. Rape, or criminal knowledge of a girl below ten, is punishable by imprisonment in the state prison for a term of not less than five years. The enticing or inveigling away of any unmarried female of previous chaste character, under the age of eighteen years, for the purpose of general prostitution or concubinage with any man other than the seducer, is punishable by fine or imprisonment or both. So also is the production of the same result by any false pretence or fraudulent means. An unmarried woman may bring a civil action to recover damages for her own seduction.

Intoxicating Liquors.—Licenses to retail intoxicating liquors are of three classes: Where the sales amount to ten thousand dollars or more as a monthly average, the license is forty dollars per month; amounting to from five thousand dollars to ten thousand dollars, it is twenty dollars; less than five thousand dollars, five dollars. The constitution of the state gives to the boards of supervisors of each county the supervision of the saloons therein. It is forbidden to sell liquor to Indians, or minors, or at camp meeting, at state capitol, or on election day; or to adulterate or sell adulterated liquor.

COLORADO.

Collection of Debts.

Arrest.—There is no arrest for debt.

Attachment.—An attachment may be put upon the property of defendants who are non-resident, or concealed, or absent more than four months, or who have fraudulently removed their property or are about to do so; or who have failed to pay the price of any article which should have been paid on delivery, or for work done or services rendered; or who fraudulently contracted the debt, etc. In some of the above cases, property may be attached before the debt is due.

Garnishment.—A garnishment process may be had for the recovery of debts amounting to twenty dollars or more, from the debtor of a debtor, or one who holds property of the latter.

Exemptions.—The necessary wearing apparel of every person, and the following property of the head of a family: Family pictures, school books, library, church-pew, cemetery lot, all beds, bedding, stoves and appendages kept for use of debtor and family, all cooking utensils, and all other household furniture to value of one hundred dollars, and provisions and fuel for six months' use. Tools and stock in trade to two hundred dollars; library and implements of any professional man to three hundred dollars; working animals to two hundred dollars; one cow and calf, ten sheep, food for same for six months, one farm wagon, plow harrow and other farming implements including harness and tackle for team not exceeding fifty dollars in value.

If the head of the family dies, the family is entitled to the same exemption.

Also the earnings of the head of a family, or of the wife of the head of a family, when such family is dependent in whole or in part thereon, for thirty days preceding levy, to amount not exceeding one hundred dollars. (This last provision only applies to debts incurred since March, 1885.)

To every householder, being the head of a family, is exempt a *Homestead* to the value of two thousand dollars, while occupied by himself or family. Entry of homestead is made by writing the word "homestead" on the margin of the recorded title.

Interest.

The legal rate of interest is ten per cent., but any rate may be agreed upon. No usury laws.

Insolvency.

A debtor may make a general assignment of all his property for the benefit of his creditors. It must be for the benefit of all his creditors in proportion to the amount of their claims, and no preferences are allowed, except in favor of laborers, servants and employes of the assignor for wages earned during previous six months, to amount of fifty dollars in any single case.

Statute of Limitations.

Actions founded on a judgment of court, not of record, for rent, waste and trespass on land, for taking or injuring personal property; also founded on contract, express or implied, must be brought within six

years after cause of action accrues; for assault and battery, false imprisonment, slander, libel, etc., within one year. Actions concerning water-rights must be brought within four years. Most other personal actions within three years.

Wills.

A valid will of both realty and personalty may be made at twenty-one years of age by men, at eighteen by women; of personalty only, at seventeen, by a person of either sex.

A married woman cannot dispose of more than one half her real or personal estate by will without her husband's written consent; and if a husband, by his will, deprives his wife of more than one half his property, she may abide by the will, or may take one half his property, as she sees fit.

Two subscribing witnesses are required to a written will. Nuncupative wills are valid when made by soldiers or seamen; or during the last illness of a testator, in presence of two witnesses requested by him to act as such; they must reduce it to writing within a reasonable time. Such a will can only dispose of personal property.

Claims against the estate of a deceased person must be presented within one year after letters granted to executor or administrator, unless a creditor finds other estate of deceased not inventoried or accounted for, out of which his claim is paid *pro rata*. To one who is under personal disability, one year is given after removal of such disability, within which to present his claim.

Descent and Distribution of Property.

After payment of debts and charges, the property, real and personal, of an intestate, descends as follows: if there is a surviving husband or wife, but no children or descendants of children, the entire estate goes to such survivor; if there is a child, or descendants of a child, one half goes to husband or wife, and the rest to the children; if no husband or wife, all goes to the children or their descendants—such descendants taking, collectively, the share which their parent would have taken if living; if no children or descendants, to father; if no father, to mother; if no mother, to brothers and sisters and their descendants; if none, to next of kin.

Illegitimate children of parents who afterward marry, are thereby made legitimate, if recognized by the father as his.

Curtesy and Dower.

There is no dower or curtesy.

Divorce.

Causes for divorce are as follows: Impotency; bigamy; adultery; wilful desertion and absence without reasonable cause for one year; wilful desertion and absence and departure from the state without intention of returning; habitual drunkenness for one year; extreme cruelty; conviction for felony or other infamous crime; in favor of wife, failure of husband, being in good bodily health, to make reasonable provision for the support of his family for the space of one year.

The plaintiff must have resided one year in the state, except when the offense was committed in the state, or whilst one or both parties resided in the state.

Married Women.

All property owned by a woman at the time of her marriage, and all

property coming to her during marriage, by inheritance, by will, or by gift of any person except her husband, constitutes her separate estate, free from the control or debts of her husband. She may make all contracts and conveyances, with respect to this estate, as if single.

Contracts and conveyances may pass directly between husband and wife, and they may form a business partnership together. The husband may take care of and manage the wife's property, but this will not affect her title to it. She may carry on any trade or business, and the proceeds, or her earnings, are her own. She may sue and be sued as if single, and may convey her realty without consent or joinder of her husband.

The husband is liable for his wife's debts contracted before marriage, only so far as he received property with or through her.

Miscellaneous.

Age of Majority.—Women are of age at eighteen.

Testimony.—A husband or wife cannot testify for or against the other, or be examined as to communications made by one to the other during the marriage, without the other's consent. But this rule does not apply in the case of civil actions by one against the other, or of criminal proceedings for a crime committed by one against the other.

Age of Consent.—The "age of consent" is ten years. Rape, or criminal knowledge of girls below ten, is punished by confinement in the penitentiary for a term not less than one year, and it may extend to life. The taking away by force or fraud of any woman of any age, with intent to seduce or marry her, or to cause her to be seduced or married by another, is punishable by imprisonment. So also is the taking of any unmarried girl below the age of sixteen years from the possession, and against the will, of her parent or guardian, for any unlawful purpose.

Intoxicating Liquors.—A license to keep a saloon, hotel, public house or grocery, in any country district, and to sell liquor in quantities less than one quart, may be given by the board of county commissioners, on the payment of twenty-five dollars to three hundred dollars, at the discretion of the board. In any incorporated city or town, the board of trustees or common council has exclusive authority to grant licenses. Penalties are prescribed for illegal selling, one-half the sum going to the informer. It is forbidden to sell or give liquor to Indians. All proprietors of saloons, gambling houses, houses of prostitution or places where obscene plays are performed, are forbidden to allow an habitual drunkard or a minor in their establishment, unless the minor is accompanied by his parent or guardian; the statute requires that in every such place the sign be prominently displayed, "No minor or habitual drunkard allowed here." Also any minor or habitual drunkard found in such a place within certain hours, without a reasonable excuse, may be fined. Every husband, wife, child, or other person injured in person, property, or means of support by any intoxicated person, or in consequence of the intoxication of any person, has a right of action to recover damages against the person who sold or gave the liquor, provided the person thus intoxicated was an habitual drunkard, and provided also that the party thus injured had previously given a written or printed notice to the person against whom the action is brought, not to sell or give liquor to such habitual drunkard.

CONNECTICUT.

Collection of Debts.

Arrest.—Debtors may be arrested, but on giving bond with a surety, not to escape, can be admitted to the "liberties of the jail," which sometimes gives them the freedom of an entire city; and there is a process by which they may be released entirely, if they can swear that they have no estate of the value of seventeen dollars, in the whole, or that they have not enough to pay the demand against them, beyond what is exempted by law from execution, and that they have not disposed of their property in order to defraud their creditors.

Attachment.—An attachment can never be put on the property of a debtor until the debt is due. No assignment of future earnings can prevent their attachment, unless it be made to secure a *bona fide* debt, the amount of which is stated, and the term of assignment limited; nor unless it be recorded in the town clerk's office, and a copy left with the employer.

Garnishment or Foreign Attachment.—Goods concealed in the hands of agents, so that they cannot be attached, or debts due from any person, may be taken by a process of foreign attachment. No assignment of future earnings can prevent their attachment, when earned, unless such assignment is made to secure a *bona fide* debt, the amount of which is therein stated and the term definitely limited, properly recorded in the town clerk's office, and a copy thereof left with employer.

Exemptions.—The following property is exempt: To any individual his necessary clothing and bedding, and household furniture necessary for supporting life; arms, military equipment, uniforms and musical instruments of any member of the militia; any pension money received from the United States while in the hands of the pensioner; implements of the debtor's trade; library not exceeding five hundred dollars in value; one sewing machine used by owner; one cow not over one hundred and fifty dollars in value; ten sheep, not over one hundred and fifty dollars in value; two swine and the pork of two swine; poultry not over twenty-five dollars in value; and so much of any debt due for personal services as does not exceed ten dollars.

From the property of any person having a wife and family (besides the articles already named), twenty-five bushels of charcoal, two tons of coal, two hundred pounds of wheat flour; two cords of wood; two tons of hay; two hundred pounds each of beef and fish; five bushels each of potatoes and turnips; ten bushels each of Indian corn and rye, and meal or flour thereof; twenty pounds each of wool and flax, or yarn or cloth made therefrom; horse and equipments not over two hundred dollars in value of any practising physician; one pew ordinarily occupied by owners; lot in burying ground; so much of any debt due for personal services as shall not exceed twenty-five dollars; and all benefits allowed by any association of persons in this state toward the support of any of its members incapacitated by sickness or infirmity from attending to his usual business; but in suits to recover payment for house rent, provisions, clothing or fuel, furnished to the debtor or for use of his family, only ten dollars shall be exempted; and if for payment of board for debtor or his family, three dollars only shall be exempted. Wages of a minor to the amount

of ten dollars are exempt, unless the suit is for personal board or necessities.

Any person owning and occupying any dwelling and real estate, can file for record a declaration that the same is a *Homestead*, and it will then be exempt from execution to the value of one thousand dollars, so long as it is actually occupied by the owner as a dwelling.

Interest.

The legal rate is six per cent. Since 1877, the borrower who agrees to pay a higher rate cannot sustain any action for usury, and probably no one else can, so that there is practically no usury law.

Insolvency.

A creditor who has sued for a debt over one hundred dollars in amount, and has found no sufficient property to attach therefor, may apply to the court of probate to appoint a trustee in insolvency of the debtor's estate. If the petition is granted, the debtor receives an allowance from his estate for the support of his family, and if he pays seventy per cent. of all claims proved, obtains a full discharge. An assignment in insolvency may be voluntarily made by any one to a trustee of his own selection.

Statute of Limitations.

Actions to recover real property must be brought within fifteen years; persons under disabilities may bring the action within five years after removal of the disability. Sealed contracts and unnegotiable notes, seventeen years; persons under disabilities, within four years after removal. Contracts in *writing* not under seal (except unnegotiable notes), six years; persons under disabilities within three years after removal. On oral contracts (except book debt), trespass or slander, three years. Actions for damages for loss of life by negligence must be commenced within one year from the neglect complained of. If the cause of action is concealed by fraud, the limitation only begins to run from the discovery of the right of action by the party entitled thereto.

Wills.

Any person of sound mind may make a will of real and personal estate when eighteen years of age. Three subscribing witnesses are required.

A will must be presented for probate within ten years from the testator's death, unless in exceptional cases.

A husband or wife cannot by his or her will deprive the other of the one third portion which each is given for life in the other's property by statute.

The marriage of a testator or testatrix, or the birth of a child, subsequent to making a will which does not provide therefor, revokes the will.

The law against perpetuities forbids tying up property for a longer time than the lives of certain living persons and their immediate descendants.

Claims against a solvent estate must be brought in within such time as the court may direct, not exceeding twelve months, nor less than six; but creditors not inhabitants of the state, are given one year after the publication of the order of notice by the court.

Descent and Distribution of Property.

On the death of either husband or wife, married on or after April 20, 1877, the survivor, except in cases where, by a written contract made before marriage or after, either party has received from the other what was

intended as a provision in lieu of such statutory share, and in cases where either party, without sufficient cause, has abandoned the other, and continued such abandonment to the time of the other's death, shall be entitled to the use for life of one third in value of all the property, real and personal, legally or equitably owned by the other at the time of his or her death, after the payment of all debts and charges allowed against the estate. The right to such third shall not be defeated by any disposition of the property by will to other parties. Where there is no will, the survivor shall take such third absolutely, and if there are no children of the deceased, or their representatives, shall take one half absolutely, instead of one third. Where either husband or wife shall have given any devise or legacy to the other by will, such provision shall be taken to be in lieu of the share herein provided for, unless the contrary shall clearly appear, but in such case the party shall have his or her election which he or she will take.

The above rule applies also to parties married before April 20, 1877, in cases where the husband and wife, during marriage, have entered into a written contract with each other for the mutual abandonment of all rights of either in the property of the other under the statutes or common law of this state as they existed prior to said date, and for the acceptance instead thereof, of the provisions given by the statute of that year [See "Married Women"], which contract shall have been duly recorded.

From the estate of a husband married prior to April 20, 1877, who has not made and filed a contract as above, the surviving wife is given one third of his personalty absolutely, the rest being divided among his children, and the representatives of any dead child; if there be no children or their representatives, she takes one half instead; she also has the use for her life of one third of the realty of which he dies possessed. In the latter case, the rest of his estate is equally distributed among his brothers and sisters of the whole blood, and the representatives of any who are dead; if none, then to parents or surviving parent; if neither, to brothers or sisters of the half-blood and their descendants; if none, then to the next of kin equally, whole blood being preferred to half. But the estate of any man who dies without children, leaving a widow, shall always be liable for her support during widowhood, if she become poor and there is no person of sufficient ability to support her, and every person to whom any portion of the estate descends, or is given by will of the deceased husband, is liable to contribute to her support in proportion to the value of such portion.

Previous to the new law, all a married woman's personalty went directly to her husband for his life, and he had his estate by the curtesy in her realty.

Curtsey and Dower.

As to parties married before April 20, 1877, and who have not recorded their acceptance of the new code of laws on the subject, the common law curtesy prevails, with the exception that it extends to all realty to which the wife had title, whether she was actually in possession or not; but the right of dower is limited to such real estate as the husband dies possessed of. Thus the husband may convey all his realty away during his life-time, without the signature of his wife, and prevent her dower right from attaching to it.

By the new law, neither husband nor wife has any interest in the property of the other, during the latter's life-time.

Divorce.

Causes for which divorce is granted are as follows: Adultery; fraud in the marriage contract; wilful desertion for three years, with total neglect; seven years' absence, during which the absent party has been unheard from; habitual intemperance; intolerable cruelty; imprisonment for life; any infamous crime, involving a violation of conjugal duty and punishable by imprisonment in the state prison.

Proof must be given by the petitioner of actual service of notice on the adverse party, unless he is out of the state, when notice may be sent by mail, or published, as the court may direct.

The parties must have had a domicile together in the state while married; or else one of the parties must have resided here three years immediately prior to the suit; or if the petitioner has removed here less than three years prior to the suit, the cause must have occurred since his or her residence here.

The court may give the custody of the children to either parent at discretion, and may give the wife a reasonable part, not exceeding one third, of the husband's estate. After divorce, either party may marry.

Married Women.

All property, real or personal, owned by a woman at marriage, or afterward acquired by her in any way, constitutes her separate property, and is not liable for her husband's debts. She may make all contracts relating thereto, and sue and be sued concerning her separate estate.

These laws do not apply to parties who were married previously to April 20, 1877, unless they sign a contract accepting the provisions of the law of 1877, and record it in the town clerk's office and probate court. The old law gave to the husband the use of his wife's realty during her life, and curtesy therein after her death, but it could not be taken for his debts during the life of the wife or of any child of the marriage, and even if wife and children were dead, only the husband's interest by the curtesy could be thus taken. All realty bought by a wife with money or other property acquired by her personal services during marriage, constitutes her separate estate even by the old law—but by that law, all her separate estate vests in the husband in trust for his wife, subject only to support for herself and children; at his death, it vests in the wife, or her heirs, devisees or legatees, as if she were single. The profits and interests of the wife's personalty, as well as her realty, are given to the husband during his life, by the old law, but they cannot be taken for his debts during her life unless the debts were for support of wife and children, and contracted after the estate vested in him; nor can he sell or transfer her estate without written rejoinder of the wife, or if she be dead, of those in whom it vests. If a husband abandons his wife, he loses all rights to her property and the rents and profits thereof, and the wife may transact business, transfer realty and sue and be sued, as if single.

A husband is not liable for his wife's ante-nuptial debts, and only for her debts after marriage which are contracted for necessities. Her property is also liable for debts for necessities, as well as for all other debts contracted by her before or after marriage; but if she is obliged to pay for necessities for herself or family, she may sue and recover the amount from her husband's property. (The husband's property must first be attached by creditors for necessities, if it can be found.) It is only for debts which are made on her personal credit, for the benefit of herself, her family or her separate estate, that such estate is liable.

Her promissory notes, given for such purposes, are binding on her estate.

By the new law, the wife's earnings are her separate property, and she may carry on business or trade as if unmarried, and sue and be sued concerning it. By it, also, the interest of husband and wife in each other's estate, real and personal, are identical.

Miscellaneous.

Women:—Women may be attorneys-at-law, and may be appointed to the offices of Commissioner of the Superior Court, and Notary Public.

Aliens:—Resident aliens, and subjects of France, whether resident or not, can hold land and transmit it by inheritance to their descendants. Other non-resident aliens can hold and transmit land only for mining and quarrying purposes.

Age of Consent:—The "age of consent" is ten years. The punishment for rape, for criminal knowledge of girls below ten, or for assault with intent to commit such crime, is imprisonment in state prison or jail, not more than ten years. The seduction of any minor female, or the enticing her away from her parent, guardian or residence for such a purpose, is punished by fine and imprisonment.

Intoxicating Liquors:—By the petition of twenty-five or more legal voters of any town, the selectmen shall order a ballot taken to determine whether or not licenses shall be granted for the sale of intoxicating liquors in such town. Every person except a licensed druggist, to whom a license is granted, shall pay therefor a sum not less than one hundred dollars nor more than five hundred dollars, as the county commissioners may determine in each particular case, and in towns of not over three thousand population, the fee (except to wholesale dealers and druggists) shall be one hundred dollars for the sale of spirituous and intoxicating liquors, and fifty dollars for the sale of ale, beer, or cider and Rhine wine. Druggists' license fees are ten dollars or twelve dollars for sale of intoxicating liquors upon prescription of any practicing physician; but by payment of fifty dollars, such druggist may be licensed to sell intoxicating liquors in quantities not exceeding one gallon, and other than distilled liquors in quantities not exceeding five gallons, not to be drunk on the premises, without a physician's prescription. In any town which has voted for prohibition, any druggist may be licensed to sell on a physician's prescription only, but not to allow liquor to be drunk on the premises. No intoxicating liquor can be sold, exchanged or given away in any building belonging to the state, county or town; nor in any dwelling-house except a hotel unless access be cut off by a partition. No liquor can be sold or given to Indians, minors, intoxicated persons, or habitual drunkard knowing him to be such, or to any wife or husband after notice from the other married party not to sell to such wife or husband. Importers of intoxicating liquor may sell in original packages without a license.

DAKOTA TERRITORY.

Collection of Debts.

Arrests.—Imprisonment for debt is abolished. No woman can be arrested on any civil action except for injury to person, property or reputation.

Attachment.—An attachment may issue against the property of the defendant in actions for the recovery of money only; or where the defendant is concealed or has absconded, or has assigned, secreted or disposed of his property with intent to defraud creditors, or is about to do so.

Garnishment.—There is no garnishee process.

Exemptions.—The following property cannot be taken for debt: Family pictures; church sitting; burial lot; school-books; family library to value of one hundred dollars; all wearing apparel of debtor and his family; provisions already provided or growing, and fuel, sufficient for one year's supply for debtor and family.

In addition to these exemptions, the debtor may select from his other personal property, goods, chattels, merchandise, money, or other personal property, to the aggregate value of fifteen hundred dollars, and this will also be reserved to him. Instead of the fifteen hundred dollars exemption, the debtor may reserve certain household goods to the value of five hundred dollars; certain domestic animals, farming utensils, wagon, tackle, etc., to value of three hundred dollars; tools, etc., used in his trade by any mechanic, also stock in trade to value of two hundred dollars. Library and instruments of any professional person, not exceeding six hundred dollars in value, is exempt.

After the debtor's death, the above exemptions are set apart for benefit of the surviving wife or husband or minor children, being liable only for necessary expenses of last illness of deceased, funeral expenses and expenses of administration, in case there is no other property available for the purpose.

No property is exempt from execution for its purchase money. No personal property, except that named above in the first paragraph as being absolutely exempt, is exempt from execution for laborer's or mechanic's wages, or physician's bills, or for debt incurred for property under false pretenses. Only the absolute exemptions can be reserved in favor of a non-resident; of a debtor who is removing, or has absconded from the territory with his family; or of a corporation for profit. A partnership firm can claim but one exemption out of the partnership property.

A legal *Homestead* is exempt except for taxes; for mechanics' liens for work or materials in improvement thereof; and for its purchase money. If within a town plat, a homestead must not exceed one acre, and if not within a town plat, it must not aggregate more than one hundred and sixty acres; no limit is fixed to the value of the land, or the buildings thereon. The homestead exemption continues in favor of widow or widower during life; and of minor children until the youngest child is of age. When it ceases to be used as a homestead, it is distributed as other property.

Interest.

The legal rate of interest is seven per cent.; but parties may contract

for a higher rate, not to exceed twelve per cent. To take or contract for a rate higher than twelve per cent. is a misdemeanor, punishable by a fine of five hundred dollars, or imprisonment for six months or both; besides which, the party thus guilty of usury forfeits all the interest thus stipulated for.

Insolvency.

An insolvent debtor may make an assignment of his property for the benefit of his creditors, either with or without their consent. But such an assignment is void if it prefers creditors, or tends to coerce creditors, or is fraudulent in any of its terms.

Statutes of Limitation.

An action for the recovery of real property or its possession, must be begun within twenty years; also any action to recover a judgment debt, or based on a sealed instrument. Actions on contracts not under seal, within six years; also actions for trespass on realty, for taking or injuring personalty, for criminal conversation, and for some other injuries to person and rights. Actions for slander, libel, assault, battery or false imprisonment, within two years.

Wills.

Every person of sound mind, and over the age of eighteen years, whether male or female, married or single, may make a will of his real and personal property.

There must be two subscribing witnesses to every written will (except an olographic will), and with their names they must write their place of residence.

An olographic will, entirely written, dated and signed by the testator himself, is good, whether made in the territory or out of it.

A nuncupative will may bequeath property to the value of one thousand dollars. It must be proved by two witnesses who were present at its making, one of whom was asked by the testator to act as such. The deceased must have been a soldier or seaman in active service, and in actual fear, contemplation, or peril of death; or at the time of making the will, he must have been in expectation of immediate death from an injury received the same day.

A will executed by an unmarried woman is revoked by her marriage, and is not revived by the death of her husband. A man's will is revoked by his subsequent marriage if his wife or any child of the marriage survive him, unless some provision has been made for such wife or child, or unless such mention is made of the wife or child as to show an intention not to make any such provision.

Claims against the estate of a deceased person must be presented within six months after the first publication of notice by the executor or administrator, when the estate exceeds five thousand dollars in value, and within four months when it is of less value.

Descent and Distribution of Property.

With the exception of the homestead and certain exempted personal property, and unless limited by marriage contract, the estate of an intestate, after payment of debts and expenses of administration, is distributed as follows: If a husband or wife and one child survive, they take equal halves; if more than one child, one-third goes to surviving husband or wife, and the remainder to the children and representatives of any deceased child. If no children, half to surviving husband or wife, other

half to father of deceased; if no father, to brothers, sisters, and mother in equal shares, and children of any deceased brother or sister. If no husband or wife or children survive, entire property goes to father of deceased; if no father, to brothers, sisters and mother equally; but if no brothers or sisters, then to the mother, to the exclusion of children of brothers or sisters. If no children, parents, brothers or sisters, but a surviving husband or wife, the entire estate goes to such survivor. If no relative already named survives, the estate goes to the next of kin. If no kindred, it escheats to the school fund of the territory.

Curtesy and Dower.

Curtesy and dower are abolished.

Divorce.

Causes for divorce are as follows: Adultery; extreme cruelty; conviction for felony; also wilful desertion, wilful neglect, or habitual intemperance continued for one year.

The plaintiff must have been a resident of the territory, in good faith, for ninety days next preceding the commencement of the action.

A divorce will not be given if there has been such an unreasonable lapse of time before bringing suit as to establish the presumption that there has been connivance, collusion or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation. This presumption may be rebutted by showing reasonable grounds for the delay.

When a divorce is granted for adultery, the guilty party cannot marry again during the life of the innocent one, unless the parties themselves be remarried.

The court may assign the homestead to the innocent party, either absolutely or for a limited time. It may also require the husband to pay alimony during the suit, and to maintain the wife and children after the decree is rendered. It may give such directions for the custody of the children as may seem best. And if a decree of divorce is denied, the court may provide for the maintenance of the wife and children by the husband.

Married Women.

Neither husband nor wife has any interest in the property of the other during the latter's life, but neither can be excluded from the other's dwelling. Neither is answerable for the acts of the other, nor for the other's debts; but the separate property of each is liable for his or her own debts, except that a wife's property is not liable for her debts, for the support of herself and family, contracted as her husband's agent.

A married woman owns all her property, real and personal, acquired before or after marriage; and may sell, convey or devise it, contract with regard to it, and sue and be sued concerning it, as though she were unmarried. Her promissory notes are valid.

Husband and wife may enter into any business relations with each other, or with any other person, which they could do if unmarried. Their mutual transactions are, however, subject to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the law of trusts. They may hold real or personal property together, jointly or in common, just as any other two persons may do.

A married woman may be the executor of a will, but she cannot be

appointed administrator of an estate. If an unmarried woman be executor or administrator, her subsequent marriage terminates her powers as such.

Miscellaneous.

Age of Majority:—Women attain majority at eighteen, men at twenty-one. Marriage emancipates a minor of any age.

Women:—Women may be county superintendent of schools, and may vote at school meetings.

Marriage:—Marriage between cousins, either of the whole or half blood, is void. So also a marriage between a step-parent and step-child. The age at which marriage may be validly contracted is eighteen for men, fifteen for women.

Testimony:—Husband or wife cannot be competent to testify for or against each other, and cannot be examined concerning any communication which passed between them during the marriage, except by the other's consent; or except in civil or criminal proceedings by one against the other.

Age of Consent:—The "age of consent" is ten years. Rape of the first degree, that is, upon a child under ten years, upon a woman of unsound mind, or perpetrated by force, is punishable by imprisonment for not less than ten years; of the second degree, not less than five years. The seduction under the promise of marriage, of any unmarried female of previous chaste character, is punishable by fine or imprisonment or both. So is any taking away of any unmarried female under the age of fifteen years from her parent, guardian or other person having legal charge of her, for the purpose of general prostitution, concubinage or marriage.

Intoxicating Liquors:—To sell intoxicating liquors in quantities less than five gallons, a license must be obtained, the fee for which is fixed by the board of county commissioners at the rate of from two hundred to five hundred dollars. In any incorporated village, town or city, a fee of from fifty to five hundred dollars may also be required. All licensed places for such retail sale must close at 11 P. M. Any relative of a habitual drunkard may make complaint to any justice of the peace of the county, who shall issue a notice to the parties thus charged with supplying liquor to such drunkard, forbidding further sales. If the order be disobeyed, the party so doing, may be fined, his license cancelled, and he will also be liable to a civil action for damages in sum of five hundred dollars, to the injured relative. It is a misdemeanor to sell or give liquor to an Indian, a minor, an habitual drunkard, an intoxicated person, a pauper, or on Sunday; or within one mile of any religious assembly.

DELAWARE.

Collection of Debts.

Arrest.—A debtor may be arrested on the ground of fraud, or if it appears that he has no property within the county sufficient to pay the debt and costs of suit.

Attachment.—When a debt which is sued on exceeds fifty dollars, and the debtor has absconded or concealed himself with intent to defraud creditors, an attachment may issue against his property.

Garnishment.—A creditor may recover his debt out of property or credits of his debtor in the hands of a third person.

Exemptions.—The rules as to property exempt from execution for debt vary in different counties, and are as follows: Family Bible, school books, library, pictures, all clothing of debtor and family, seat or pew in church, lot in burial ground, are exempted throughout the state. Also tools, implements and fixtures of trade or business, not exceeding seventy-five dollars in value in New Castle and Sussex counties, and fifty dollars in Kent county. Also to the head of a family, other household goods not over two hundred dollars in value in New Castle county, and not over one hundred and fifty dollars in value in Kent county; in Sussex county, there is no such additional exemption. Sewing machines owned and used in private families or by seamstresses, are exempted from execution for debt, and also from being taken for rent. In New Castle county, all wages are exempt.

A widow has the same right of exemption out of her husband's goods that he would have had. Funeral expenses and all expenses of last sickness are also paid out of deceased's personalty, before it can be taken on execution for debt.

Interest.

Legal rate of interest is six per cent. Any higher rate is usurious, and the penalty for usury is the forfeiture by the lender of a sum equal to the money lent.

Insolvency.

An insolvent debtor may make a voluntary assignment of his property for the benefit of all his creditors. No preference of any particular creditor or claim can be made. It must be acknowledged before a notary public, and filed in the office of the register of the court of chancery. The assignee must render an account of his trusteeship every year until the estate is closed and final account rendered.

Statute of Limitations.

Actions to recover real property must be brought within twenty years; actions on promissory notes and bills of exchange, within six years; actions of trespass to realty, to recover personalty, and some actions based on unwritten contracts, within three years.

Nothing short of a direct acknowledgment or a distinct admission by the debtor, of the existence of the debt as a subsisting demand, is sufficient to remove the bar of the statute after the requisite number of years has passed, so as to revive the claim.

Wills.

Any person of sound mind, of either sex, married or single, may make a will of realty and personalty, at the age of twenty-one years. Two witnesses are required.

A nuncupative will may be made of personal estate to the value of two hundred dollars, by one in his last illness. Two credible witnesses, expressly requested by the testator to act as such, must reduce the will to writing within three days from the date of its making, and sign the same. If the testator dies within the three days, or if at their expiration, he is alive but not capable, then or afterward, of making a will, the nuncupative will is valid; otherwise not. It must be produced in the register's office for probate within thirty days after the testator's death.

Marriage alone does not revoke a will; but if, after making his will, a man marries, and afterward dies leaving his widow surviving and unprovided for by will or otherwise, she takes the same share of his realty and personalty that would have been hers had he died intestate. But if any person having at the time no lawful issue, shall make a will containing no provision for any child or children that he may have, the birth of such child who survives the parent, revokes the will.

Claims against the estate of any deceased person must be brought within a year from the date of letters testamentary or of administration. A married woman may act as executor or administrator.

Descent and Distribution of Property.

Real property descends as follows: If there are children, one third goes for life to the widow, and the residue is equally divided among the children, the descendants of any dead child taking such child's share. If there are no children, one half goes for life to the widow, and the residue is equally divided between the brothers and sisters of the deceased, the descendants of any dead brother or sister taking his or her share. Brothers and sisters of whole blood are preferred to those of half blood. If there are no brothers or sisters, or descendants thereof, then to the father; or if no father, to the mother. If neither is alive, it goes to the next of kin, and their descendants. If there is no widow, the entire estate descends in the order given above. If the intestate is a married woman, her real estate is subject to curtesy as by common law; and if she had no children by the marriage, the husband takes one half of it (after payment of all her debts) for his life.

Personal property is applied to the payment of debts, etc., and is then distributed as follows: To the widow, one third absolutely if there are children; one half absolutely if there are no children; the whole, if there is no kin. The residue (or if there is no widow, the whole) goes to the children, and descendants of any deceased child. If there are no children, to the brothers and sisters of the whole blood, descendants of any deceased taking his share. If no such, then to those of the half blood. If none, to the father; or if dead, to the mother; if neither, to the next of kin. If the intestate is a married woman, her husband takes her entire personalty, after payment of her debts, etc.

Curtesy and Dower.

Common law curtesy prevails, with this addition, that if there were no children by the marriage, the husband takes one half of her realty for his life.

Common law dower also prevails, with the similar variation, that if no

children survive the husband, the widow takes one half his realty for her life, instead of one third.

Divorce.

Causes for divorce are as follows: Divorce from the bonds of matrimony for adultery; desertion for three years; habitual drunkenness; impotency; extreme cruelty; a conviction of felony. Divorce from the bonds of matrimony, or from bed and board, at the discretion of the court, for fraud in the procurement of the marriage; want of legal age (the man being under eighteen, or the woman under sixteen at marriage, and no voluntary ratification of the marriage having taken place after those ages), or for wilful neglect of husband for three years to provide for his wife necessities of life suitable to her condition.

Alimony pending suit and attorney's fees may be given the wife by the court, and if the divorce is granted for the husband's fault, she is given such share of his realty and personalty as seems to the court reasonable, and all her own real estate. If for the wife's fault, part or all of her real estate may be restored to her at the discretion of the court, and such share of her husband's personalty as seems reasonable.

If any inhabitant of this state goes into another jurisdiction to obtain a divorce, for any cause occurring here, or for any cause which would not authorize a divorce under Delaware laws, a divorce so obtained is of no force in Delaware.

Married Women.

All property, real and personal, owned by a woman at marriage—if the marriage has taken place subsequently to April 9, 1878—and all that has come to any married woman during marriage, since that date, from any person except her husband, together with the rents, issues and profits of such property, constitute her separate estate, free from her husband's control or debts. Her earnings are her own, and she may sue and be sued in regard to them and her other separate property. She may also contract with regard to her separate estate, but she cannot bind herself by other contracts. All a wife's debts, contracted before or during marriage, may be collected from her separate estate. She cannot convey her real estate unless her husband joins in the conveyance. It has not been determined whether she can execute notes or transact business as an unmarried woman may do. She may, however, give a bond, with or without a warrant of attorney.

Miscellaneous.

Women.—Women cannot be whipped nor made to wear the convict's jacket for larceny, as men may be.

Mechanics' Liens.—Any person who has performed work or furnished materials to an amount exceeding twenty-five dollars, may obtain a lien on the property for the improvement of which such work or materials were furnished.

Aliens.—A resident alien, who has made a legal declaration of his intention to become a citizen of the United States, is capable of taking any estate in lands, by deed or by will, and he may give a good title to the same. Laws have been passed by each successive legislature for some years past, specially legalizing all conveyances and devises of lands made up to that time by any aliens; and authorizing the widow and children of any alien who has died previous to that time, to take such portion of his estate as they would have done if he had been a citizen. But beyond

these special exceptions, the rule is in force that any kindred of any deceased person (whether he was himself a citizen or an alien), who are themselves aliens, and residing at the time of the death of the intestate, outside the limits of the United States, cannot inherit real property situated in the state.

Age of Consent.—The "age of consent" seems to be fixed at seven years. The punishment for rape, or for criminal knowledge of a child below seven years, is death; and for an assault with violence with intent to commit such crime, the penalty is a fine of from two hundred dollars to five hundred dollars, and the sentence of standing one hour in the pillory, being whipped with thirty lashes, and being imprisoned not exceeding ten years. Also for any lascivious conduct with any female child under the age of twelve years, the penalty is a fine not exceeding five hundred dollars, and imprisonment for a term not exceeding three years.

Intoxicating Liquors.—The license fee for retailing intoxicating liquors by a grocer or other storekeeper, is twenty-five dollars; for keeping an inn or tavern one hundred dollars, or if the rental value of the place is over five hundred dollars, the fee is increased at the rate of ten per centum on such rental value. It is unlawful to sell to a minor, habitual drunkard, insane or intoxicated person; or to sell or give away liquor on Sunday. To do so is a misdemeanor punishable by fine; and if such sale to one of known intemperate habits be made, and any injury is caused him in consequence thereof, the seller of the liquor is liable in damages to his or her wife, husband, child or children.

DISTRICT OF COLUMBIA.

Collection of Debts.

Arrest.—No person can be held to bail in a civil suit, or imprisonment for debt other than fines. No woman can be arrested or imprisoned except for crime.

Attachment.—An attachment may be put on the property of a defendant who is non-resident, or who has concealed himself, or is temporarily absent from the state to evade service of process, or has removed or is about to remove his property with intent to defeat just demands against him.

Garnishment.—Property of a debtor in the hands of another, or money owing the former from the latter (except that which is exempt as stated later), may be taken by a garnishment process.

Exemptions.—The following property is exempt: All clothing; all family pictures; family library to value of four hundred dollars; one cow, one swine, six sheep; beds, bedding, household furniture, stoves, cooking utensils, etc., not over three hundred dollars in value; provisions for three months' support, provided or growing, fuel for three months; tools and implements of trade or business amounting to two hundred dollars in value; two hundred dollars' worth of stock for business; library and implements of professional man or artist to value of three hundred dollars; one horse, one mule or yoke of oxen; one cart, wagon or dray, and harness; and food for team for three months; and other farming utensils of a farmer to value of one hundred dollars.

But none of these exemptions, except clothing, beds, bedding, household furniture and provisions, are good against debts due for wages of servants, common laborers or clerks.

The earnings, not to exceed one hundred dollars each month, of all actual residents of the District who are married, or who have to provide for a family in the District, for two months next preceding, shall be exempt, and not liable to be taken by any process.

Interest.

The legal rate of interest is six per cent., unless parties stipulate in writing for more; they may so stipulate, up to ten per cent. But agreements to receive more than ten on written contracts, or more than six on verbal contracts, are usurious, and the entire interest is forfeited thereby, only the principal being recoverable; if the higher rate be actually paid, he who pays it may recover back the entire interest if he brings an action therefor within one year after such payment.

Insolvency.

There are practically no insolvency laws. An assignment for the benefit of creditors may be made, with or without preference of claims, but no provision is made for the discharge of a debtor.

Statute of Limitations.

Actions upon simple (that is, unsealed) contracts, including promissory notes, bills of exchange, book-debt and accounts, also all actions for trespass to realty and recovery of personality, must be brought within three years. For assault, battery, imprisonment, one year. Actions on judgment debts and all sealed contracts may be brought within twelve years.

Wills.

A will of real and personal property may be made by any testator of sound mind and twenty-one years of age; by any testatrix of sound mind and eighteen years. Since April 10, 1869, a married woman may dispose of her property, real or personal—acquired since that date by any other means than gift or conveyance from her husband—by will or deed as if unmarried.

Three subscribing witnesses are required. A will must be on paper or parchment. Marriage revokes a will previously made.

A will giving any property to religious, charitable or public purposes, must be made at least one month before death, to make such gift valid.

Claims against the estate of a deceased person must be presented within three years after appointment of executor or administrator.

Descent and Distribution of Property.

Real estate descends to children of an intestate, in equal parts, and to their descendants. If none, and if the estate came from the father, it goes to him if living, and if dead, to intestate's brothers and sisters of the father's blood and their descendants; if none, to other paternal next of kin; if none, it goes to intestate's mother, or to her relatives similarly. If the estate came from the mother, it goes to her or her relatives, or in default of any, to the father and his relatives. If the estate came to the intestate by purchase, and he leaves no children or their descendants, it goes to his brothers and sisters of the whole blood, and their descendants; if none, to those of half blood; if none, to father; or if dead, to mother; if neither, to grandfather on father's side or his descendants; next to grandfather on mother's side and his descendants, etc. If there be no kindred, it goes to husband or wife of intestate, if there be one living; or if there be one dead, to kindred of the deceased husband or wife.

The personal estate of an intestate is first applied to payment of debts, etc., and is then distributed as follows: If there are children or their descendants, and a widow, she takes one third, and the rest is divided among the children; if no children, but intestate leaves father or mother, brothers, sisters or their descendants, his widow takes one half, and they take the rest; if no children, grandchildren, parent, brother or sister, the widow takes all. If no widow, the whole goes to the children; or if none, to the father; or if dead, to the mother, brothers and sisters and their descendants equally; if no brothers or sisters or their descendants, the mother takes all; or if no mother, all the collateral relations take the property in an equal degree. There is no distinction of whole or half blood in the distribution of personalty.

Curtesy and Dower.

Common law dower prevails.

Common law curtesy also, in realty acquired by the wife previous to April 10, 1869; but as to realty acquired by her later, the better opinion is that no curtesy attaches.

Divorce.

Causes of divorce are as follows: From bed and board for cruelty endangering health or life; reasonable apprehension of bodily harm; wilful desertion for three uninterrupted years. From bond of matrimony for causes already stated; also for adultery, bigamy, impotency, or for lunacy of either party at the time when the marriage took place.

If the cause accrued outside the District, applicant must have resided

in the District for two years next preceding application. The court may at its discretion give wife alimony pending suit; also permanent alimony with decree, her right of dower, and the property which was hers at marriage, or its value.

Married Women.

A wife may hold all property, real and personal, however and whenever acquired (unless from her husband) as her separate estate, free from his debts or control; and she may bind herself by all contracts in reference to her property, and may sue and be sued in reference thereto. Her earnings belong to her husband, unless he consents that she shall have them; they are protected from his creditors for debts contracted subsequently to such gift.

Miscellaneous.

Testimony.—Neither husband nor wife is competent to testify for or against each other in criminal proceedings, or in any action instituted in consequence of the adultery of the other. Neither is compellable to disclose private conversations which took place between them during the marriage.

Mechanics' Liens.—All buildings are subject to a lien in favor of the contractor, sub-contractor, material-man, journeyman and laborer, respectively, for the payment for work or materials furnished for the erection or repair of such building; also for machinery or other thing placed in or connected with the building so as to become a fixture. Any mechanic or artisan who shall make, alter or repair any article of personal property may have a lien thereon for work done or materials furnished, and may retain such article until such charges are paid, and if not paid within six months, may sell the same at public auction.

Age of Consent.—The age of consent is ten years. The punishment for rape or for being accessory thereto before the fact, is imprisonment at hard labor from ten to thirty years for the first offense; or for life, on conviction of the second offense. For assault with intent to commit the crime, the term is one to five years for first offense, five to fifteen for the second. The seduction under promise of marriage of any unmarried woman of previous chaste character is a crime, punishable by imprisonment, and the woman, as well as her father or guardian, may also sue for damages in a civil action. It is also a crime, punishable by fine or imprisonment or both, to entice away any girl under the age of eighteen and to place her in any disorderly house for any immoral purpose; and a crime punishable by imprisonment, to entice or take away any unmarried woman under the age of twenty-five, if of previous chaste character, for the purpose of prostitution, or to aid and abet the same.

Intoxicating Liquors.—It is forbidden to sell intoxicating liquors without a license, which must be approved by the board of police. It is also forbidden to sell to soldiers.

FLORIDA.

Collection of Debts.

Arrest.—There is no arrest for debt except on the ground of fraud.

Attachment.—An attachment may issue against the property of a debtor when the debt is due, if he is fraudulently removing or disposing of his property, or concealing himself with intent to defraud creditors.

Garnishment.—All property of a debtor in the hands of another, except that which is exempt from liability, may be taken by a garnishee process. The plaintiff must file an affidavit stating that he does not believe that the defendant has in his possession visible property on which a levy can be made, sufficient to satisfy the claim.

Exemption.—Exempted from forced sale under any process of law, is one thousand dollars' worth of personal property to be selected by the debtor.

Also a *Homestead* of one hundred and sixty acres, or in any incorporated city or town the half of one acre, owned by the head of a family residing in this state, and the residence and business house of the owner thereon. But no property is exempt from sale for taxes or for the purchase money of the premises, or for improvements thereon, or for house, field or other labor performed thereon.

Also the money due for personal services or labor of any person who is the head of a family, residing in this state, is exempted from attachment or garnishment.

Interest.

Any rate of interest may be contracted for; when none is named, the legal rate is eight per cent. No usury laws.

Insolvency.

No provision is made for insolvent debtors. A debtor may assign his property for the benefit of creditors, with or without preference, but acceptance by a creditor of a dividend will not operate as a discharge of the debtor, the amount so paid being only applied on account.

Statute of Limitations.

Actions to recover real property, or actions founded on title to real property or to rents of the same, must be brought within seven years from actual possession thereof; actions on judgments and sealed contracts, within twenty years; on contracts not under seal, five years; on contracts not in writing, for trespass to realty or recovery of personalty, within three years; for libel and slander, assault and battery, and false imprisonment, two years; an action on an open account for goods, wares and merchandise sold and delivered, and an action for any article charged in a store account, within four years.

Wills.

Any person of sound mind, of either sex, married or single, may make a will of real and personal property at the age of twenty-one years. Three subscribing witnesses are required to every written will.

A nuncupative will may be made in the last sickness of the deceased.

It must be proved by three witnesses who were present at its making, and requested by the testator to act as such. It must be reduced to

writing by them, and sworn to before some judicial officer of the state, within six days after its making.

Wills made in any other state, purporting to devise lands situated in Florida, must be executed according to the laws of Florida.

The head of a family cannot devise his homestead so as to deprive his children of the value of the same.

Claims against the estate of a deceased person must be presented within two years after appointment of an executor or administrator.

Descent and Distribution of Property.

The real estate of an intestate descends as follows: In parcenary to his children or their descendants; if none (and if no widow), to his father; if dead, to mother, brothers, sisters and their descendants; if none it goes to more distant kindred, passing always first to the nearest lineal male ancestors, or in lack of them, to the lineal female ancestors in the same degree, and the descendants of such male and female ancestors or such of them as there may be.

A widow may elect whether she will take her common law dower in her husband's realty for her life, or whether she will take a child's part absolutely in both realty and personalty—that is, the same share that would come to her if she were a child instead of wife, of the deceased. If the husband die intestate and without children, his widow is the sole heir at law of all his property, real and personal.

If a married woman die intestate, her husband takes a child's part in her property, both real and personal. If there are no children, he is her sole heir at law.

Personal property, after payment of debts (and if there is a will, payment of legacies), is distributed as real estate is.

Curtsey and Dower.

The interests of husband and wife in each other's property have been stated under the heading "Descent and Distribution of Property."

Divorce.

There is no divorce from bed and board; all divorces granted are absolute. The causes are adultery, impotency, the prohibited degrees of affinity or consanguinity; extreme cruelty; habitual intemperance; habitual indulgence of violent and ungovernable temper; wilful desertion for one uninterrupted year. When either party had a former husband or wife living and undivorced, the second marriage is null and void from the beginning and the children illegitimate.

The applicant must have resided in this state for two years prior to application. One who has been a citizen of the state the requisite length of time, and whose husband or wife shall have already obtained a divorce in any other state or country, may be given one in Florida.

A suit for alimony may be brought by a wife whose husband has deserted her for one year; treated her with inhuman cruelty; or lived in open adultery for three months, if she prefers this to suing for a divorce. She is thereby released from the control of her husband and may use her alimony and all other property, independently of him. On decreeing a divorce also, the courts have power to make a provision for the wife out of the husband's estate, suitable to the condition of the parties, and this is usually done.

Married Women.

All property, real and personal, of a wife, owned before marriage, or acquired afterward, is her separate estate. That it may not be liable for

the debts of her husband, it must be inventoried and recorded in the circuit court clerk's office of the county where it is situated, within six months after marriage, or after its subsequent acquirement by her. Her husband has the care and management of her estate, but he cannot charge her for such care and management, nor can she sue him for the rent, hire, issues, proceeds or profits thereof. Her property is liable for her debts, but not for those contracted for her support or that of her children, or for expenses of the family. Her husband must join her in all sales, transfers and conveyances of her property, and in all contracts binding upon it, unless she apply for and receive a license as free dealer, which gives her full power of control over her own property, of conveying the same, contracting, suing and being sued with regard to it. A husband is not liable for his wife's ante-nuptial debts.

Miscellaneous.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a female child below that age, or for rape, is death or imprisonment for life. Any fraudulent and deceitful enticing or taking away of an unmarried woman of chaste life for the purpose of prostitution, is punishable by fine or imprisonment or both.

Intoxicating Liquors.—A license for the sale of intoxicating liquors can be obtained only on a petition to the county commissioners, signed by a majority of the registered voters in the election district, each signature attested by two credible witnesses, and the petition and signatures published for two weeks in a newspaper. When the license is granted, the tax for selling spirituous liquors is three hundred dollars for each place of business; dealers in vinous or malt liquors only, pay a tax of twenty-five dollars for each place; and distillers of spirituous liquors, a tax of three hundred dollars in each county for each place of business. It is forbidden to sell liquors to minors or intoxicated persons, or to sell within two miles of any camp ground used for religious service during the camp-meeting session, unless it be at the party's regular place of business where he has usually sold the same prior to the establishment of such camp ground.

GEORGIA.

Collection of Debts.

Arrest.—There is no arrest for debt.

Attachment.—An attachment may issue against the property of a debtor who is non-resident, or who is about to remove his property from the state, or who has concealed himself or removed, or is about to do so, with intent to defraud creditors.

Garnishment.—There is a garnishee process by which debts may be collected out of property of the debtor's in the hands of another. But the wages of all journeymen, mechanics and day laborers are exempt from garnishment.

Exemptions.—Exempted in favor of every head of a family, or guardian, or trustee of a family of minor children, and of every aged and infirm person, and person having the care of any dependant female, is realty or personalty or both to the aggregate value of one thousand six hundred dollars; except that it may be sold for taxes, purchase-money, labor done thereon or materials furnished therefor. Or in lieu of this, certain specified articles of personal property, together with fifty acres of land and five additional acres for each child under sixteen years of age may be selected.

The wife and children of a deceased person are entitled to twelve months' support out of his estate in preference to all other claims, except those of his last illness, funeral, and for administration of the estate.

Interest.

The legal rate of interest is seven per cent. Parties may stipulate in writing for eight per cent., but a higher rate than eight is usurious, and the surplus must be forfeited if action is brought to recover it.

Insolvency.

An insolvent debtor may make a voluntary assignment for the benefit of his creditors. Also any corporation, not municipal, or any trader or firm of traders may be forced to make an assignment by petition of the creditors. Any person or firm shall be considered a trader who is engaged as a business in buying and selling real or personal estate of any kind, or who is a banker or broker or commission merchant or manufacturer, manufacturing articles to the extent of five thousand dollars per annum. If there has been an honest surrender by the debtor of all his property, the court may recommend to the creditors that they discharge him from further liability.

Statute of Limitations.

Suits on judgments rendered in any court outside of the state, must be brought within five years from the date of judgment. Judgments rendered in the state become dormant in seven years, if no execution is issued thereon; or if execution is issued and no return is properly made thereon within seven years; but at any time within three years after a judgment thus becomes dormant, it may be revived by taking proper proceedings to do so. Suits on bonds and all other instruments under seal must be begun within twenty years; so also for the recovery of land from one who holds it without any written evidence of title; but to recover land from one who holds it with such evidence, suit must be begun within seven years, unless the title be forged or fraudulent to the knowledge of

the claimant at or before the commencement of his possession. Suits on promissory notes and other unsealed written contracts, must be brought within six years; on open accounts and unwritten contracts, four years; also for trespass to realty and injuries to personalty, four years; for injuries to the person, two years; to the reputation, one year.

A new promise must be in writing, to revive a debt already barred; but a payment on a note entered in the debtor's handwriting, or any other written acknowledgment of existing liability is sufficient.

Wills.

Any person of sound mind, of either sex, married or single, may make a will of realty and personalty, at the age of fourteen years.

Three subscribing witnesses are required to written wills.

A nuncupative will properly made and proved, may pass all property, real and personal. It must be made in the last sickness of the deceased, and in the house of his habitation or dwelling, or where he had been a resident for the space of ten days or more next before the making of such wills, except where such person was taken sick, and died, being from his own home. Application for probate of a nuncupative will must be made before the court within six months after the death of the testator, and the substance of the testamentary dispositions must be reduced to writing within thirty days after the speaking of the same.

If a testator or testatrix is married after making a will, or if a child is born after a married man or woman has made a will, no provision having been made for wife, husband or child, by such will or otherwise, the will is thereby revoked.

A will giving property to any religious, charitable or public purpose, to be valid must be made ninety days before the death of the testator, if he leave a wife, child or descendant of any child, and not more than one third of his estate can be devised to any such purpose, to the exclusion of such wife, child, or descendant thereof.

Claims against the estate of a deceased person must be made to the executor or administrator within twelve months from the time said executor or administrator qualified as such.

Descent and Distribution of Property.

If either husband or wife die intestate, leaving no children or descendants of children, the survivor is sole heir; if there be children, the surviving husband or wife takes a child's share absolutely, except that when there are more than five children and the survivor is a widow, she takes one fifth of the property, and the residue goes to the children, unless she elects to take her dower out of the realty, instead of a share therein. If there are no children or their descendants, or husband or wife, the estate goes to the brothers and sisters of the intestate, and to the children or grandchildren of any deceased brother or sister. The father inherits equally with the brothers and sisters, and if he be dead, but the mother of the intestate be alive and a widow, she inherits his share; but if she has married again, she takes nothing, unless the intestate be her only, or last surviving child.

Curtesy and Dower.

See Descent and Distribution of Property.

Divorce.

To give a total divorce, there must be favorable verdicts by two juries at different terms of the court.

Causes for which a total divorce may be granted are as follows: Mar-

riage within the prohibited degrees of affinity or consanguinity; mental incapacity at time of marriage; force, menace, duress, or fraud in obtaining the marriage; in favor of the husband for pregnancy of the wife at time of marriage, unknown to him; impotency; adultery; wilful desertion for three years; conviction for an offense involving moral turpitude, and sentence to penitentiary for two years; cruel treatment; habitual intoxication. It is in the discretion of the jury to grant a total, or a partial divorce, for the two last named causes.

The second jury determines the matter of division of the property, according to the circumstances of the husband, and the sources from which the property came.

Married Women.

All a wife's property, held at marriage or subsequently acquired, is her separate estate, free from her husband's debts, and she may contract, sue, and be sued in regard to it, and convey it away, in her own name, as if unmarried. Her property is not liable for debts contracted by her as agent for her husband for support of herself and children; but is liable for debts contracted by her individually for such support unless the terms under which the property was settled upon her, restrain her from charging it with her contracts.

She may become a free trader, by her husband's consent, published for one month in a newspaper. The profits of such trade will be her separate property, and she will be personally liable on all her contracts.

She cannot bind herself or her property by any contract of suretyship for her husband, nor assume his debts.

She may be appointed executrix or administratrix, and her subsequent marriage shall not affect her rights and powers in such capacity.

Miscellaneous.

Age of Majority.—A woman is legally capable of contracting a marriage at fourteen years of age. She may make a valid will at that age; but for other purposes she is of age at twenty-one.

Mechanics' Liens.—Mechanics who have taken no personal security, shall have a lien on the property built or repaired by them, without regard to the ownership of said property, or to the nature thereof. Certain statutory provisions must be complied with, to give such a lien.

Age of Consent.—The "age of consent" is ten years. The punishment for rape, or for criminal knowledge of a female child below the age of ten, is death; unless the jury recommends to mercy, when it is the same as for an assault with intent to commit the crime; from one to twenty years imprisonment at hard labor.

Intoxicating Liquors.—A general local option law prevails, by which prohibition may be secured in any county by vote of the qualified electors. A call for such an election must be made by petition, signed by one tenth of the voters in the county. No new election can be called within two years. There are also local laws regulating the sale of liquors by prohibition, local option, or high license, in many localities. Where licenses are granted under the general laws, the fee is twenty-five dollars county tax and twenty-five dollars state tax. Selling without a license is a misdemeanor. It is forbidden to sell to minors, without written authority from the parent or guardian. So also to sell to any drunkard, or intoxicated person; or to sell within one mile of any church, meeting-house, or other place used for divine worship during the time appropriated to such worship, unless the same be within an incorporated city or town.

IDAHO TERRITORY.

Collection of Debts.

Arrest.—A debtor who is defendant in an action, may be arrested when he was originally guilty of fraud in contracting the debt, or when he has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Attachment.—The property of a defendant may be attached if he is a non-resident, or to recover payment of money not otherwise secured.

Garnishment.—Property or debts of a debtor in the possession of another, may be attached to satisfy the claims against the first party.

Exemptions.—The following property is exempt: Chairs, tables, desk and books to the value of two hundred dollars; necessary household table and kitchen furniture including one sewing-machine in actual use in a family, or belonging to a woman; stoves and their furniture; beds and bedding; pictures drawn or painted by any member of the family and all family portraits; wearing-apparel; provisions already provided, sufficient for three months; two cows with sucking calves; two hogs with sucking pigs. Also farming utensils, etc., of a farmer, to the value of three hundred dollars; certain working animals, food for them for one month, harness and wagon; all seed grain or vegetables actually provided for planting or sowing within the next six months to the value of two hundred dollars; necessary tools, etc., of a mechanic, to the value of five hundred dollars; certain necessary implements, libraries, etc., of a professional man; the cabin or dwelling of a miner to the value of five hundred dollars, and his tools, etc., to the value of two hundred dollars.

Also exempt are the earnings of the debtor for personal services rendered within thirty days next preceding the levy, when such earnings are necessary for the use of his family, residing in the territory, and dependent in whole or in part on his labor.

Also a *Homestead* to the value of five thousand dollars, when the same is duly selected and a declaration thereof made by husband or wife, or both, while residing thereon, and duly acknowledged and recorded where the property is situated. Or if the debtor does not own a homestead, but holds shares in a duly incorporated homestead association, such shares to the value of one thousand dollars are exempt.

No article or species of property is exempt from execution issued upon a judgment recovered for its price, or upon a mortgage thereof.

Interest.

Ten per cent. is the legal rate of interest, where no rate is expressly agreed upon. Any rate not exceeding one and a half per cent. per month may be agreed upon in writing. The penalty for a greater rate is three times the amount so paid, and the liability of paying a fine of three hundred dollars or imprisonment for six months, or both.

Insolvency.

There are no insolvency laws.

Statute of Limitations.

Actions for the recovery of real estate, or for its possession, must be brought within five years after possession by the plaintiff; actions upon a judgment debt within six years; upon any written contract, five years;

not in writing, four years; for trespass to realty, taking or injuring personalty, three years.

A new promise to pay or an acknowledgment of the debt, must be in writing and signed by the debtor, in order to renew the obligation.

Wills.

Every person of sound mind, married or single, may make a valid will of personalty and realty at twenty-one years of age, and of personalty only, at eighteen, always saving to the widow one half of the community property.

Two subscribing witnesses are required.

The statutes concerning wills in the territory are very meager; and in their absence, common-law rules prevail.

Descent and Distribution of Property.

If an intestate leaves a surviving husband or wife and only one child, they take all his property in equal halves; if more than one child, the husband or wife takes one third, and the rest is equally divided among the children, descendants of any deceased child taking his share. If no children or descendants thereof, one half goes to the surviving husband or wife and the other half to the intestate's father; if no husband or wife, all goes to the father; if no father, to brothers, sisters and mother of intestate, in equal shares; if no brothers or sisters, all goes to the mother, to the exclusion of the descendants of any deceased brother or sister. If the intestate leaves no children or their descendant, no parents, brothers or sisters, but leaves a surviving husband or wife, such survivor takes the whole estate. If there are none of the heirs named, it goes to the next of kin. If no kindred, the estate escheats to the territorial school fund.

Illegitimate children are the heirs of their mother; also of the person who shall have acknowledged in writing, signed in the presence of witnesses, that he was their father. The mother and her heirs also inherit from such a child, if he dies without issue.

Curtesy and Dower.

There is no curtesy or dower. The system of community property prevails instead.

Upon the dissolution of the community by death of either party, one half of the community property goes to the survivor, and half to descendants, if any; if none, then all to the survivor.

Married Women.

All property, real and personal, owned by either husband or wife at marriage, or acquired afterward by gift, devise, or descent, is his or her separate property. The wife's separate property must be inventoried, and recorded in the office of the recorder of the county where it is situated. The husband has the management and control of the wife's property during the marriage, but he cannot sell or encumber it, except by an instrument in writing signed by both, and separately acknowledged by her according to law.

If he mismanages it, or commits waste, the court may appoint a trustee to take charge of and manage it for her. All the property acquired by either party after marriage other than that already specified as separate property, constitutes the common property, of which the husband has the entire management and control, and may sell or encumber the same as he may do his own separate estate. The rents and profits of the separate property of both, is usually common property.

The separate property of the husband is not liable for the wife's antenuptial debts, but hers is.

She may bind her separate estate by her contracts and by her notes. She may become a free trader and carry on business as if unmarried, by taking proper legal steps to that effect. She is then responsible for the maintenance of her children.

The homestead cannot be conveyed away or encumbered without the wife's written consent, if the wife is an actual and *bona fide* resident of the territory.

Miscellaneous.

Mechanics' Liens.—Every person performing labor or materials for the construction, alteration or repair of any mining-claim, building, wharf, ditch, tunnel, machinery, road, etc., or who performs labor in any mining-claim, has a lien upon it for the same. So also for labor or materials expended on other property, whether working under a contract or individually.

Age of Consent.—The "age of consent" is twelve years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment for a term of not less than five years, and which may extend to life. An unmarried woman may bring a civil action to recover damages for her own seduction.

Intoxicating Liquors.—Any person who sells, by wholesale or retail, any spirituous, malt or vinous liquors, without first obtaining a license as required by law, is guilty of a misdemeanor, the penalty for which is a fine of from twenty-five dollars to one hundred dollars for each offense.

ILLINOIS.

Collection of Debts.

Arrest.—No person shall be arrested for debt unless upon refusal to deliver up his property for the benefit of his creditors or in cases where there is a strong presumption of fraud.

Attachment.—The property of a debtor can be attached only when the debt exceeds twenty dollars, and when the debtor does not reside in the state, or has removed or is about to remove himself or his property therefrom with intent to defraud his creditor, or when he has been guilty of fraud in some other way concerning the debt.

Garnishment.—In any case where an attachment may issue against the property of a debtor, persons who have property of his in their possession, or who are indebted to him, may be garnished. So also when a judgment debt is not paid. If the debtor is the head of a family residing therewith, his wages to the amount of fifty dollars are exempt from garnishment.

Exemptions.—Personal property is exempt to every debtor as follows: All necessary wearing apparel, Bibles, school books, family pictures, and one hundred dollars' worth of other property, to be selected by him. In addition, when the debtor is the head of a family, and resides with the same, three hundred dollars' worth of other property, to be selected by him. But no debtor can make his selection of personal property from any money, wages or salary due him.

To every householder, having a family, is exempted the farm or lot of land, with buildings thereon, occupied as a residence, and owned, leased, or otherwise possessed by him, to the value of one thousand dollars. If the premises exceed this value, an appraisal must be had, and if the property can be divided without injury, the dwelling and sufficient land to be worth one thousand dollars is exempt and the rest may be sold; if not, the debtor has the option to pay the excess over one thousand dollars of the debt which he owes and keep the property, or allow it to be sold, and receive one thousand dollars out of the proceeds of such sale. This *Homestead* exemption, unless released by deed, extends to the surviving husband or wife, and to the children until the youngest becomes twenty-one, so long as they occupy it. But no homestead is exempt from debts due for their purchase or improvement.

No exemption is allowed when the debt is due for wages of a laborer or servant. A family which has lost its head by death or desertion, or otherwise, is entitled to the same exemptions.

Interest.

The legal rate of interest is six per cent; any rate not exceeding eight per cent. may be stipulated for in writing; above this is usurious, and the penalty for usury is forfeiture of the entire interest.

Insolvency.

Any insolvent debtor may make an assignment of his property for the benefit of creditors. The claims of laborers and servants are given preference over others.

Statute of Limitations.

Actions for the recovery of real property must be brought within
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twenty years after the right of action is gained; but if an adverse claimant has been residing on the property, under a title which is apparently good, for seven years, or has been paying taxes for seven years on vacant and unoccupied lands to which he apparently has good title and of which he really believes himself to be the owner, he thereby becomes the owner and after the seven years have passed no question can be raised thereon. Judgment debts are good for twenty years. All written contracts, and evidences in writing of any kind of indebtedness, whether sealed or unsealed, are good for ten years after the cause of action arises. All unwritten contracts are good for five years; also all actions for injury to property or recovery of personal property, must be brought within five years. Actions for injury to the person, false imprisonment, or malicious prosecution, two years; slander or libel, one year.

If the debtor is out of the state when the cause of action arises, the action may be brought within the time limited, after his return.

To renew any written contract that has been outlawed, the new promise must be in writing; but an oral contract may be renewed by an oral promise. Part payment of the debt will renew any barred contract.

Wills.

Any man of sound mind may make a valid will of his real and personal property at the age of twenty-one years; and any woman at eighteen. A married woman may dispose of her property, by will, in the same manner and to the same extent as a married man may.

Two subscribing witnesses are required to a written will.

A nuncupative will is good for the conveyance of personal property, if made at the time of the last sickness of the testator; and if committed to writing within twenty days after the making thereof; and proven by two or more credible, disinterested witnesses, who were present when the testator spoke his wishes, and who were requested by him to bear witness that such was his will, or words to that effect. Two other disinterested witnesses must also prove that the said will was committed to writing within ten days after the death of the testator. It must be recorded like other wills, but no letters testamentary can be granted on such a will until the expiration of sixty days after the death of the testator. A nuncupative will may be good, even though there was time within which a written one might have been prepared. No technical words need be used by the testator. If there is realty sufficient to pay his debts, the personalty may all go, free of claims, according to the wishes expressed by the testator.

No head of a family can deprive his widow or minor children of their right to the homestead, by his will.

A will is revoked by the subsequent marriage of the testator (if solemnized since July, 1872). If a child be born to the testator after he has made a will in which no provision is made for such child, the will is not thereby revoked, but (unless it appear by the wording of the will that it was his intention to disinherit the child) he shall receive out of the property the same share which would have been his in the absence of any will.

A married woman may be appointed administratrix or executrix.

Claims against the estate of a deceased person must be presented within two years after appointment of executor or administrator.

Descent and Distribution of Property.

The real and personal estate of intestates descends alike as follows: To the children in equal parts, the descendants of any deceased child taking his share. If there is no child or descendant thereof, and no surviving husband or wife, then to parents, brothers, sisters, and their descendants, each parent taking a child's share, and if one parent be dead, the survivor takes two shares. If no child or descendant thereof, but a husband or wife survives, one half of the realty and all the personalty, goes to such survivor, and the residue as in other cases where there are no children. When there is such survivor and children or their descendants, the survivor takes one third of the personalty absolutely, and one third of the realty for life. If there are none of the relatives already named, and no husband or wife, the property goes to the next of kin. If there is no kindred, but a surviving husband or wife, he or she is sole heir. If no kin or husband or wife, the estate escheats to the county in which the greater part of the property is situated.

The "widow's award" may also be referred to here, being payable to the exclusion of every other charge against the estate of the husband deceased, except funeral expenses. It comprises specific articles amounting in value usually to twelve or fifteen hundred dollars, according to her condition in life, but she may take the amount in money, or part in property and part in money, as she may elect.

Curtesy and Dower.

Curtesy is abolished, and the surviving husband or wife has a like interest in the estate of the other, namely: One third for life of all the lands which belonged to the deceased at any time during the marriage, including equitable estates, and estates which had been contracted for and the title to which may be completed; unless such dower claim shall have been previously relinquished in legal form.

Divorce.

The causes of divorce are as follows: Impotency; bigamy; adultery; desertion or drunkenness for two years; attempt by one on life of the other by poison or other means showing malice; extreme and repeated cruelty; conviction of infamous crime.

If there was a prior and undissolved marriage, the second marriage may be pronounced null and void, and the children of such a marriage are illegitimate.

The complainant must have resided one year in the state, unless the offence was committed here, or while one or both parties lived here.

The decree may be given on the testimony of the plaintiff alone, if no defense is set up, but the examination of the witnesses is now required to be had in open court, and the judge must be satisfied that all proper means have been taken to notify the defendant, and that the cause charged against him is properly proved by reliable witnesses.

The court may grant to the wife alimony pending suit, and counsel fees; and on final decree, may make such orders as may be reasonable and just, regarding permanent alimony, and the custody and support of the children. The homestead may be disposed of as seems most just under the circumstances.

Any woman suing for a divorce who shall make it appear satisfactorily to the court that she is poor and unable to pay the expenses of such suit, shall be allowed to prosecute her complaint without costs, or payment of fees to the officers of the court.

Married Women.

A married woman may claim in her own right all the property, real and personal, obtained by descent, gift or purchase, and she may manage and control it to the same extent exactly that a husband may manage and control his property. She may sue and be sued, may make all contracts, bind herself by promissory notes, and control her own earnings. Husband and wife may make transfers of property from one to the other, and if such a transfer is written, acknowledged and recorded, it will be good as to third parties. But she cannot enter into any partnership business without her husband's consent, unless he has abandoned her, or is insane, idiotic or imprisoned. Neither husband nor wife can claim compensation for services rendered the other. Neither is liable for the debts of the other, incurred before or after marriage, but the property of both is chargeable with the expenses of the family and the education of the children.

When either party abandons the other and is absent from the state for a year, or is imprisoned or idiotic or insane, any court of record may place the entire management of his or her property in the hands of the other, and subject it to the support of the family.

A married woman who, without her fault, lives apart from her husband, may apply to equity, for a reasonable support out of his estate, reference being had to the condition in life of the parties.

Miscellaneous.

Age of Majority.—Women are of age at eighteen. The marriage of a female ward discharges her guardian from her custody and education, but he must retain the care of her property until her majority.

Women.—No person shall be precluded or debarred from any occupation, profession or employment (except military) on account of sex. But women are not required to work on streets or roads, or to serve on juries, and no woman shall be permitted to work in any mine. Any woman, married or single, of the age of twenty-one years and upward, and possessing the qualifications prescribed for men, shall be eligible to any office under the general or special school laws of this state. She must qualify and give bonds as required by law before entering upon the discharge of the duties of such office.

Guardians.—The father of a child, born or unborn, may by will appoint a guardian, but no such will shall take effect to deprive the mother, during her life, of the custody and tuition of the child without her consent, if she be a fit and competent person.

Mechanics' Liens.—Any person who by contract, express or implied, with the owner of any lot or piece of land, furnishes labor or materials or services as an architect or superintendent in building, altering, repairing or ornamenting any building on such lot, shall have a lien on the land or building for the amount due him.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment for a term not less than one year, and which may extend to life. For assault with intent to commit this crime or any other felony, the penalty is imprisonment from one to fourteen years. For wilfully and maliciously entering a dwelling-house in the night-time (whether forcibly, or, the doors or windows being open, without force) with intent to commit this crime, or any other felony or larceny, the penalty is imprisonment from five to twenty years; and for such entering into any building

of any kind, in day or night, the penalty is imprisonment from one to twenty years. The enticing or taking away of any unmarried female of a chaste life and conversation from her parents' house or wherever she may be found, for the purpose of prostitution or concubinage, is punishable by imprisonment from one to ten years, as is also any aiding or assisting such abduction for such purpose.

Intoxicating Liquors.—A dram-shop is a place where intoxicating liquors are retailed in less quantities than one gallon.

The county boards of each county may license as many dram-shops in their county as they may think the public good requires, upon the application by petition of a majority of the legal voters of the town, if the county is under township organization, or if not, then of a majority of the legal voters of the election precinct or district where the same is proposed to be located, and upon the payment of such a fee as the board may require, not less than five hundred dollars per annum for spirituous liquors, or one hundred and fifty dollars for malt liquors only; except in a corporate city, town or village and within two miles of the same, wherein the power of licensing, regulating, restraining or prohibiting the sale of liquors is vested in the corporate authorities. It is optional, therefore, with the board of trustees or the corporate authorities of any place, to grant licenses or not as they may think best. It is forbidden to sell or give intoxicating liquor to any minor, without a written order from parent; guardian or family physician; or to any intoxicated person; or any habitual drunkard. Every person who, by selling liquor with or without a license, causes the intoxication of another, shall be liable to pay a reasonable compensation to any one who may take charge of and provide for such intoxicated person, and two dollars per day in addition for each day such person shall be kept in consequence of such intoxication. Also every husband, wife, child, parent, employer, or other person who shall be injured in person, property or means of support, by any intoxicated person, or in consequence of such intoxication, shall have a right of action for damages against the party who sold or gave the liquor which caused the intoxication, and also against the owner or lessee of the building in which such liquor was sold, provided that he knew such sales were made therein.

INDIANA.

Collection of Debts.

Arrest.—A debtor may be arrested if he is about to leave the state taking his property with him, with intent to defraud his creditors. No woman can be arrested or imprisoned on any civil process.

Attachment.—The property of a defendant may be attached when the action is for the recovery of money, when the defendant is a foreign corporation or non-resident, or secretes himself, or is about leaving or has left the state, or is removing his property therefrom, or has sold or is about selling or disposing of his property, with intent to defraud his creditors.

Garnishment.—One who has property of the debtor in his hands, or who owes him money, may be summoned to appear and account for it; and he may be arrested on affidavit of plaintiff that he believes the garnishee is about to abscond, having property of the debtor, with intent to defraud creditors.

The wages of any person to the amount of one month's wages at any one time, are exempt while in the hands of the employer, and while the person remains in such employment.

Exemptions.—Every resident householder may claim as exempt from execution, real or personal property, or both, to the value of six hundred dollars, on any debt founded on contract made since May 31, 1879. On contracts previously made, the exemption is only to the value of three hundred dollars. There is no special *Homestead* exemption, nor is any property exempt from claims for labor, purchase-money or taxes.

Interest.

The legal rate of interest is six per cent.; any other rate, not exceeding eight per cent. may be stipulated for in writing; above that is usurious; and the penalty for usury is forfeiture of the surplus over six per cent.

Insolvency.

An insolvent debtor may make a voluntary assignment of his property in trust for the benefit of his creditors.

Statute of Limitations.

Actions to recover possession of real estate must be brought within twenty years; except when sold on execution sale, in which case action must be brought to recover it within ten years after the sale; and except also when sold by executors, administrators, or guardians by order of court, when action by a party to the judgment or his heirs, etc., must be brought within five years. Judgment debts, and written contracts other than those for the payment of money, are good for twenty years; promissory notes, bills of exchange and other written contracts for the payment of money, ten years; accounts and contracts not in writing, six years; also all actions for the rents and profits of real estate, for injuries to property, recovery of personal property, etc., must be brought within six years; actions for injuries to person or character, within two years.

Persons under disabilities may bring action within two years after its removal.

A new promise must be written and signed by the debtor, in order to renew the obligation, once it has been barred. And that a part payment of the debt may do so, it must be voluntary and under circumstances which show an intention to pay the balance.

Wills.

Any person of sound mind, of either sex, married or single, may make a will when twenty-one years old.

Two subscribing witnesses are required to a written will.

A nuncupative will may be made by a soldier or seaman in actual service, disposing of his personal estate and his wages. Also when made in the last sickness of the testator, such a will may dispose of property to the value of one hundred dollars, if it be reduced to writing within fifteen days after spoken, and proved by two competent witnesses within six months.

If a woman makes a will and then marries, her will is thereby revoked. A man's marriage does not revoke his will previously made, unless a child is also born and survives him, in which case the will is revoked unless it makes provision for such child.

A married woman may be appointed executrix or administratrix, if her husband gives his written consent thereto. And the marriage of an executrix or administratrix shall not terminate her trust, if her husband consent in writing to its continuation, and she give further bonds if they are required. So also if she be a guardian, and in such case, the husband also becomes liable for the due execution of the trust.

Claims against the estate of a deceased person must be brought within one year after notice of appointment of the executor or administrator.

Descent and Distribution of Property.

If an intestate leaves children, and no wife or husband, his or her property, real and personal, is equally divided among them, the children of any deceased child taking the latter's share. If one child, or its descendants and a widow, she takes one half of his realty in fee simple, free from all demands of his creditors; and if more than one child, the widow takes one third, unless the estate is over ten thousand dollars in value, when, as against creditors, she takes one fourth only; if over twenty thousand dollars, one fifth. Of his personalty, she takes one half, if there is but one child; if two or more, she takes one third. But in every case, she takes five hundred dollars from the estate, without accounting, and if the entire estate does not exceed this sum, no costs or fees need be paid the officers of court for administration, etc. A widow may elect whether to take under her husband's will, or the law.

If a widow marry a second husband, she cannot during such marriage, sell or otherwise dispose of real estate which came to her from her former husband, if she has children by her former marriage, unless they are of age and join with her in such conveyance; and if she dies leaving the second husband surviving, he takes a life interest only in such land, which goes at his death to her children by the former marriage. So a second wife takes only a life estate in her husband's lands if he leaves surviving children by his former marriage, unless she also has living children by him.

If a wife dies, with or without a will, leaving a husband surviving, one third of her property, real and personal, goes to him absolutely, subject only to its proportion of her debts before marriage.

When the intestate leaves no children or descendants thereof, but leaves a husband or wife and parents or parent, three fourths of all the property, real and personal, goes to the widow or widower, and the residue to the parents or parent, unless the whole does not exceed one thousand dollars, when it all goes to the widow or widower. If no child

and no parent, the whole of the intestate's property goes to the widow or widower. If no child and no husband or wife, one half of intestate's property goes to parents or parent, and the residue equally to brothers and sisters and descendants of such as are dead; if no parent, all goes to brothers, sisters and descendants of such as are dead, as tenants in common; if no brother or sister or descendant, but surviving parents, to them jointly, or if but one parent, all to him or to her. If no relatives as named, it goes to remoter kin according to certain rules. If no kindred capable of inheriting, it escheats to the state school fund.

The law of descents in this state is peculiar, comprising many fine distinctions impossible to give here.

Curtsey and Dower.

Curtsey and dower are abolished. If the wife dies with or without a will, one third of her real estate goes to her husband in fee simple. If he dies, with or without a will, one third of his real estate goes to her in fee simple, free from all demands of creditors, if its entire value is ten thousand dollars or less. But if it exceeds that sum, she takes, as against creditors, only one fourth, and if it exceeds twenty thousand dollars, only one fifth. If either party dies without a will, leaving no children, the survivor takes the whole estate.

If the husband's realty is attached and sold during his life to satisfy claims against him, her interest therein becomes absolute immediately, and her share of the property or its value in money, is paid over to her. At her death, her husband inherits this property, or if he dies first, the children of the marriage inherit it.

Divorce.

Causes for divorce are as follows: Adultery; impotency; abandonment for two years; cruel and inhuman treatment; habitual drunkenness; conviction of infamous crime; in favor of wife, failure of husband for two years to make reasonable provision for his family.

The petitioner must have been a *bona fide* resident of this state for two years, and of the county at the time of, and at least six months immediately preceding, the filing of such petition.

When the defendant resides out of the state, notice of the pending action may be served on him by sending him a newspaper in which is a printed notice of the petition, but in all such cases, the defendant may open up the decree at any time within two years, and may defend against the granting of the divorce or against the alimony and division of property, and until the expiration of the said two years, it is not lawful for the party obtaining such divorce to marry again; and this shall be stated in the decree of the court.

All marriages prohibited by law on account of affinity, consanguinity, differences of color, or where either party has a former husband or wife living, if solemnized within this state, are null and void from the beginning; but the children of such a marriage are legitimate in the first three cases, and in the last also when begotten before the discovery of such disability by the innocent party.

Married Women.

A married woman may hold real and personal property, and the profits thereof, as her separate estate, free from her husband's debts, and she may bargain, sell and transfer her personal property as though she were single, but to convey her realty, her husband must join in the conveyance,

unless he is insane, imprisoned, or has abandoned her, when the court may empower her to convey and contract alone.

She may contract debts, sue and be sued with reference to her separate estate. She may carry on any trade or business, and perform any labor on her own personal account, and the profits are her separate estate. Her husband is not liable for her debts contracted in regard to her separate estate, but that estate itself is liable, except that she is entitled to the same exemptions as are householders, namely, to the amount of six hundred dollars. She cannot mortgage or encumber her separate estate as security for debts of her husband or any other person; nor can she enter into any contract of guaranty or suretyship, or as indorser, such contracts being absolutely void.

Miscellaneous.

Age of Majority:—The age of majority for both sexes is twenty-one. A man may contract marriage at eighteen and a woman at sixteen, but the consent of parent or guardian is required if the ages are less than twenty-one and eighteen respectively.

Marriage:—Relatives of nearer kin than second cousins cannot marry.

Guardians:—A widowed mother, if a suitable person, shall have the custody and education of her minor children.

Women:—A woman is eligible for any office the election of which is or shall be vested in the General Assembly, or the appointment to which is or shall be vested in the Governor; also to act as short-hand reporter in court; and to any office under the general or special school laws, upon possessing the qualifications prescribed for men.

Testimony:—Husband and wife are competent witnesses for and against each other in all cases except as to communications made to each other during marriage, and except in seduction.

Age of Consent:—The "age of consent" is twelve years. The punishment for criminal knowledge of a child below that age, or for rape is imprisonment not less than five nor more than twenty-one years. The seduction under promise of marriage, of any female of good repute for chastity, under twenty-one years of age, is punishable by fine and imprisonment. So also is the enticing away of any woman of previous chaste character, for purposes of prostitution. An unmarried woman may bring a civil action to recover damages for her own seduction.

Intoxicating Liquors:—For a license to sell intoxicating liquors in quantities of less than a quart at a time, a fee of one hundred dollars must be paid to the county treasurer; or for the sale of malt or vinous liquors only, a fee of fifty dollars. Such fees are paid into the school fund of the county. Cities and incorporated towns may also require an additional license fee of one hundred dollars to be paid. It is forbidden to sell or give away liquor to minors, prisoners, or intoxicated persons; or on Sunday or legal holidays; or between the hours of eleven o'clock P. M. and five o'clock A. M.; or within one mile of any place where any assemblage of people is collecting or collected together for religious worship, or for agricultural fair or exhibition; (except where the party sells on his own land, or in his established place for such sale, etc.) For selling or giving liquor to any habitual drunkard, after notice in writing of such habit, from any citizen of the township or ward wherein such person resides, the penalty is fine, imprisonment, disfranchisement, and incapacity for holding any office of trust or profit for any determinate period.

IOWA.

Collection of Debts.

Arrest:—There is no arrest for debt, except in case of fraud.

Attachment:—An attachment may issue against the property of a defendant if he is non-resident, or about to remove his property out of the state, or to dispose of it with intent to defraud creditors, or has absconded, or removed from the state or is about to do so; or if the debt is due for property obtained under false pretences. In some cases, the property of a debtor may be attached before the debt becomes due.

Garnishment:—By the garnishment process, property belonging to the debtor may be attached in the hands of a third party, or debts or wages due him; but all earnings for ninety days' personal services, rendered either before or after the garnishment, are exempt.

Exemptions:—To non-residents of Iowa, and to residents who are unmarried and not the head of any family, there is exempt their ordinary wearing apparel, and trunks to contain it.

Personal property of a resident debtor who is the head of a family, is exempted as follows: Wearing apparel of self and family, in actual use and suitable to their condition, and trunks to contain the same; all private libraries, Bible, portraits, pictures, musical instruments and paintings not kept for sale; one musket or rifle, and shot gun; a pew and burial lot; two cows and a calf; one horse; fifty sheep and their wool, and articles manufactured therefrom; five hogs and their pigs under six months old; six stands of bees; necessary food for all or any of these animals for six months; flax raised by debtor on one acre of land, and manufactures therefrom; one bedstead and bedding for every two persons in the family; cloth manufactured by debtor not exceeding one hundred yards; household furniture not exceeding two hundred dollars in value; all spinning wheels and looms, one sewing machine, and other instruments of domestic labor kept for actual use; provisions and fuel necessary for the family for six months; proper tools, instruments, or books of farmer, mechanic or professional man; horse, or team of any two working animals with wagon and harness, by use of which the debtor habitually earns his living; to a printer, printing press and types, furniture and material necessary for use of a printing and newspaper office, not exceeding twelve hundred dollars in value. If a debtor who is the head of a family, has started to leave the state, only his and their clothing and seventy-five dollars worth of property to be selected by himself, can be exempted. No property whatever is exempted from being taken for the purchase money thereof.

The earnings of any debtor for his personal services for ninety days are also exempt.

The *Homestead* of every head of a family is exempt, embracing the house used by him as a home, and if in a town plat, land not exceeding one half an acre in extent, or if not in a town, forty acres of land, with all improvements and buildings of whatever value thereon. But a homestead may always be sold for the payment of debts contracted before its purchase, or of any contracted afterward which by written agreement expressly bind it. Upon the death of either husband or wife, the survivor may continue to possess and occupy the homestead. If there is no

survivor, and no will, the homestead descends to the children of either husband or wife, and is exempt from any previous debts of their parents or their own.

Interest.

The legal rate of interest is six per cent., but parties may agree in writing for the payment of any rate not exceeding ten per cent. If a higher rate is agreed to, it is usurious and the plaintiff can recover only the principal, without interest or costs of suit, and the defendant must also pay a sum equal to ten per cent. of the principal for the use of the school fund of the state.

Insolvency.

A general assignment of all his property may be made by an insolvent debtor for the benefit of all his creditors. The debtor is not thereby discharged from all his debts and liabilities, the only effect of the assignment being to entitle all his creditors to share equally in his estate.

Statute of Limitations.

Actions founded on a judgment rendered by any court of record, must be brought within twenty years; actions based on judgments of any other court, actions to recover real property, and actions on written contracts, within ten years; on unwritten contracts and for injuries to property, five years; injuries to person or reputation, two years.

Persons under disabilities must begin action within one year from the removal of the same. A new promise or an admission that the debt is due, must be in writing, to renew the obligation.

Wills.

Any man of sound mind, may make a will of realty and personalty, at the age of twenty one years; any woman, married or single, at eighteen.

Two subscribing witnesses are required to all written wills. Nuncupative wills made by soldiers and sailors in active service may dispose of all their personal property, but if made in last sickness of testator, can only dispose of such property to the value of three hundred dollars. There must be two competent witnesses to such a will.

The birth of a child revokes a will previously made. So also the birth and recognition by its father of an illegitimate child revokes his will previously made.

A married woman may act as executor or administrator independent of her husband.

Claims against the estate of a deceased person must be made within one year after appointment of executor or administrator, unless peculiar circumstances entitle the claimant to equitable relief, or unless the claim is already pending in the district or supreme court.

Descent and Distribution of Property.

The real estate of an intestate, after payment of any charges upon it, descends as follows: One third to surviving husband or wife, and the balance equally to children, the children of any deceased child inheriting his share. If there are no children, the widow or widower takes half, and intestate's parents half; if there is no widow or widower, the whole goes equally to the children and their descendants; or if none, to the parents or surviving parent. If no parent, the estate, or such portion of it as would have been inherited by the parent, goes to his or her heirs. If there is no kin, the estate escheats to the state.

The personal property of an intestate, after payment of debts, is distributed in the same way as the real property.

Curtsey and Dower.

Curtsey and dower are abolished. Instead, either husband or wife takes one third absolutely, of all the legal and equitable interests in real property which had been possessed by the other at any time during the marriage, and which has not been sold to satisfy any judicial decree, and the right to which has never been relinquished by the survivor. After payment of debts and charges out of the personalty, the survivor takes one third of that also. If there are no children or descendants thereof, the surviving husband or wife takes one half of realty and personalty instead of one third.

Divorce.

Causes of divorce are as follows: Adultery; wilful desertion and absence without reasonable cause for two years; conviction of felony; habitual drunkenness (habit contracted after marriage); inhuman treatment endangering life; and in favor of the husband, for pregnancy of the wife at marriage by another than the husband, unless such husband have an illegitimate child then living and unknown to the wife at the time of the marriage. Marriages may also be annulled (pronounced void from the beginning) when within the prescribed degrees of affinity or consanguinity, or for impotency, insanity or idiocy at the time of the marriage; and when either party had a husband or wife living and undivorced at the time of the marriage—but if since the death of such former husband or wife they have continued to live together, the marriage becomes valid.

The plaintiff must have been a *bona fide* resident of the state for an uninterrupted year, unless the defendant is a resident and has had personal service of the petition for divorce. The court may make such orders as are right and proper concerning the custody of the children, division of property, and maintenance of wife; and the guilty party forfeits all rights acquired by the marriage in the property of the other, or otherwise.

Married Women.

A wife in Iowa is in as independent possession and control of all her property, obtained before or after marriage, and of her earnings, as a husband is of his. She may sue and be sued in all actions in her own name.

Contracts and conveyances directly between husband and wife are binding, and they may enter into business partnership relations. The husband is however, entitled to the labor of his wife, except when she is carrying on a separate business, or is working for wages under a lawful contract; and she can in no case have a claim against him for her domestic labor or other assistance in the duties growing out of the marital relation. The husband may maintain an action for an injury to her which deprives him of her services; but she herself cannot, in such a case, sue for loss of time consequent upon the injury, unless she is engaged in a separate business.

Family expenses and education of the children may be charged against both parties or either, but neither is liable for debts of the other, contracted before or after marriage.

Miscellaneous.

Age of Majority.—The age of majority is twenty-one for men and eighteen for women, but all minors attain majority by marriage, which may be legally contracted at sixteen by boys and at fourteen by girls.

Women.—Women may hold any school office in the state, and may be attorneys at law.

Guardians.—Both parents are equally entitled to the care and custody of their children; if either dies, the other becomes the guardian. Either parent, if suitable and competent, may be the guardian also of the child's property.

Mechanics' Liens.—Mechanics are entitled to a lien upon buildings and improvements made, and the land on which situated if belonging to the proprietor of the buildings, for all work and labor done and materials furnished. These liens may be assigned to another. If for labor only, they are exempt from attachment for debt.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment for life or any term of years. The seduction of any unmarried woman of previous chaste character is punishable by fine and imprisonment. So also is the enticing away of any unmarried female under the age of fifteen, from her parent or other person having the legal charge of her person, without their consent, for the purpose of prostitution.

Intoxicating Liquors.—A prohibitory amendment to the constitution was passed in 1882, but it was pronounced invalid. In 1884, a prohibitory statute was passed by which the manufacture, sale, or keeping for sale, as a beverage, of any intoxicating liquors, including ale, wine and beer, was prohibited and heavy penalties fixed, namely: For manufacturing, a fine of two hundred dollars and costs, or imprisonment not to exceed six months, for the first offense; for every subsequent conviction, a fine of from five hundred to one thousand dollars and costs, and imprisonment for one year; for selling, the penalty for the first offense is a fine of fifty to one hundred dollars and costs; for every subsequent conviction, three hundred to five hundred dollars and costs, and imprisonment not to exceed six months; for owning or keeping with intent to sell, the penalty for the first offense is a fine of fifty to one hundred dollars and costs; for every subsequent conviction, a fine of three hundred dollars to five hundred dollars, or imprisonment not more than six months, or both, in the discretion of the court. An action may also be maintained by any citizen against one who owns or uses a building wherein liquor is kept with intent of selling the same, for the abatement of a public nuisance. Any citizen who does not keep a hotel, saloon, eating-house, grocery or confectionery establishment, may obtain from the board of supervisors of the county, a permit to buy and sell intoxicating liquors for mechanical, medicinal, culinary and sacramental purposes only. To obtain such permit, he must procure a certificate signed by a majority of the legal voters of the township, town or ward, as to his moral character, citizenship and suitability for such buying and selling; he must also give a bond in the sum of three thousand dollars, with two or more sureties, conditioned that he will carry out the provisions of all laws relating to such sale; a public hearing must be had thereon, notice being published in a newspaper, at which any citizen of the county may appear and object. An account-book of all purchases and sales made under such permit must be always subject to the inspection of any proper official. It is unlawful to sell—under permit or otherwise—to any minor for any purpose, unless upon written order of his parent, guardian or family physician, or to sell to any intoxicated person or habitual drunkard.

KANSAS.

Collection of Debts.

Arrest:—A debtor can be arrested or imprisoned only in cases of fraud.

Attachment:—An attachment may be placed on the property of the defendant in any action for the recovery of money, if he is non-resident or a foreign corporation, or has absconded or concealed himself, or left the county of his residence to avoid the service of summons, or is about to remove, conceal, or dispose of his property in fraud of his creditors, or has already done so; or when the debt, liability or obligation was fraudulently contracted; or where the suit is for damages arising from the commission of some felony or misdemeanor or the seduction of any female; or where the debtor has failed to pay for any article delivered, for which by contract he was bound to pay on delivery. In many of the above cases, the attachment may issue before the debt is due.

Garnishment:—There is a garnishee process by which property or debts due the debtor may be attached in the hands of another.

Exemptions:—Every head of a family, resident in the state, may have exempt all wearing apparel of the family; all family books, musical instruments and pictures; a seat or pew in church, and burial lot; bedsteads, bedding, stoves and cooking utensils used by the family; one sewing machine; all implements of industry; and five hundred dollars' worth of other household furniture; two cows, ten hogs, one yoke of oxen and one horse or mule (or in lieu of other working animals a span of horses or mules); twenty sheep and their wool; necessary food, provided or growing, for the animals named, for one year; one wagon, cart or dray; two plows, one drag, and other farming utensils, including harness and tackle for teams, not over three hundred dollars in value; provisions and fuel for family for one year; necessary tools and implements of labor of any person, actually used in trade or business, and stock in trade not over four hundred dollars in value, and library, implements, and office furniture of any professional man.

Also (unless the debt be secured by a lien jointly given on the property by husband and wife), a *Homestead* to the extent of one hundred and sixty acres of farming land, or one acre within the limits of any incorporated town or city, occupied as a residence by the family, with all improvements on the same; and the homestead shall not be alienated without the joint consent of husband and wife.

No property shall be exempt from sale for taxes, nor for its purchase money, nor for improvements thereto.

Any resident, not the head of a family, has exempt his wearing apparel; church pew and burial lot; necessary tools and implements of his trade or business; stock in trade not over four hundred dollars in value; and the library implements and office furniture of a professional man.

Interest.

Seven per cent. is the legal rate, but parties may agree in writing for any rate not exceeding twelve per cent. The penalty for usury is forfeiture of the excess above twelve per cent.

Insolvency.

Any debtor may make a voluntary assignment of his property for the benefit of all his creditors. There is no insolvent law, and after such assignment, the debtor is not discharged from his debts, nor is there any punishment attached if he does not assign all of his property or fraudulently conceals part of it. The law merely provides for the proportionate distribution among all creditors who properly prove their claim, of all the property assigned.

Statute of Limitations.

Actions for the recovery of land must be brought within fifteen years; except when for land sold on execution, or for taxes, or sold by executors or others under an order of court, within five years after the deed is recorded. If the plaintiff was under any legal disability when the cause of action accrued, two years are allowed after removal of the disability. An action on any written contract must be brought within five years; on an unwritten one, express or implied, three years; for trespass to property or recovery of personalty, two years; for slander, libel, assault, battery, false imprisonment, one year. To those under legal disabilities in the above case, one year is given after removal of the disability. A part payment of the debt, or a written acknowledgment or promise, renews a contract otherwise outlawed.

Wills.

Any man of sound mind and twenty-one years of age, and any woman of sound mind and eighteen years of age, married or single, may make a will of real and personal estate.

Two subscribing witnesses are required to every written will. A nuncupative will is good when made in the last sickness, to convey personal estate, if testified to by two competent witnesses, who were requested to act as such, and who reduced it to writing and subscribed their names within ten days after it was spoken. It must be offered for probate within six months after the death of the testator.

Marriage revokes a previous will. So also does the birth of a child, unless he be provided for by some settlement or by the will, or so mentioned in the will as to show an intention of disinheriting him.

No husband or wife can bequeath more than one half his or her property away from the other, unless the latter's consent thereto be given in writing, executed in the presence of two witnesses. If there are no children, any married person may devise half his or her property to other persons than the survivor.

Any person may make his will, inclose it in a sealed wrapper, indorse it with his name, and deposit it in the office of the judge of the probate court in the county in which he lives. It can only be removed by the order of the testator himself while he lives, and after his death it is to be delivered according to the directions on the back of the package, or if no such directions are given, it is publicly opened.

Claims against the estate of a deceased person must be presented within three years from appointment of executor or administrator. But infants, persons of unsound mind, imprisoned persons, and persons absent from the country, are given three years after the removal of such disability.

Descent and Distribution of Property.

One half of all real estate in which any married person had a legal or equitable interest at any time during the marriage, which has not been

sold at judicial sale, or jointly conveyed away by both husband and wife, and which is not necessary for the payment of debts, goes in fee simple to the surviving wife or husband. (But if the survivor never lived in the state, he or she cannot claim any part of such real estate as the deceased wife or husband may have sold without the consent of the survivor, during the marriage.) The other half goes equally to the children or their descendants; if no children or descendants thereof, the surviving husband or wife takes the whole in fee simple (unless by will one half of it, or some portion of the one half, is otherwise disposed of). If there is no husband, wife or child, the whole estate goes to the parents, or surviving parent. If both are dead, it goes as it would have done, had one or both of the parents outlived the deceased and died in possession thereof.

The *Homestead*, actually occupied by the family, is the absolute property of the widow and children, one half to her, the other to them; or if no children, she takes the whole, and if no widow, they take it. If both, the homestead cannot be divided until the youngest child attains majority, unless the widow marries again.

Such personal property as is exempt from liability for debts, goes to the widow and children just as the homestead does. Other personal property, not necessary for the payment of debts, is distributed in the same manner as the real estate.

Illegitimate children are heirs of their mother; and of their father also if he has publicly recognized them as his, or if he has given such recognition in writing. In the same way, such parent is heir of illegitimate children.

Curtsey and Dower.

Curtsey and dower are abolished. The survivor takes one half the property, real and personal, of the other, absolutely, and cannot be deprived thereof by the will of the deceased.

Divorce.

Causes for divorce are as follows: Former marriage undissolved; one year's abandonment; adultery; impotency; pregnancy of wife by other than her husband; extreme cruelty; fraud in the marriage contract; habitual drunkenness; gross neglect of duty; conviction of felony.

The plaintiff must have resided in the state one year. The court has discretion as to granting temporary or permanent alimony to the wife, and as to custody of children.

Neither party can marry within six months after divorce is granted, within which time proceedings may be taken to reverse the decree. But after six months, either party may marry again.

The wife may, if she prefer, sue for alimony without divorce.

Married Women.

In Kansas, a married woman is almost entirely relieved from common law disabilities. She can hold all property of whatever kind, acquired in whatever way (except by gift of her husband), against him and his creditors. Her earnings are her own, and she may convey her property, sue and be sued in like manner as a married man may do, and may carry on any trade or business alone.

A loan of money by the wife to her husband constitutes a valid claim against him, and the wife may make a valid purchase of personal property directly from her husband. She is liable on a note executed by her in payment of her husband's debt.

Miscellaneous.

Age of Majority.—The age of majority is twenty-one for men, and eighteen for women.

Women.—Women may vote at district school meetings if qualified as men must be. They may be attorneys at law.

Guardians.—The parents are natural guardians of the persons of their minor children. If either dies, or is incapable of acting, the natural guardianship devolves upon the other. The survivor may appoint a guardian by his or her last will. The natural guardian may also be appointed guardian of the child's property.

Marriage.—Marriage between uncle and niece, aunt and nephew, and first cousins, are incestuous and absolutely void.

Testimony.—Husband and wife are in no case permitted to testify as to any confidential communication made during marriage. They may testify for or against each other in divorce and criminal cases, but cannot be compelled to do so. They may be compelled to testify for or against each other concerning transactions in which one acted as agent for the other, or when they are joint parties in an action. No attorney, clergyman or physician can be compelled to testify as to any confidential communication made to him.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment and hard labor for from five to twenty-one years. For taking any female under the age of eighteen years away from her parent or guardian without the latter's consent, for the purpose of prostitution or concubinage, imprisonment and hard labor for a term not exceeding five years. For seduction under promise of marriage, of any female of good repute under twenty-one years of age, a fine not exceeding three thousand dollars, or imprisonment not exceeding two years, or both; but the testimony of the woman alone shall not be sufficient evidence of a promise of marriage.

Intoxicating Liquors.—By an amendment to the constitution, the manufacture, sale or barter of intoxicating liquor is prohibited except for medical, scientific and mechanical purposes. Any liquor, by whatever name called, that will produce intoxication is included in the prohibition. To sell for medical, scientific or mechanical purposes, a druggist's permit must be had from the probate judge of the county, who may grant such permits only to those of good moral character, and lawfully and in good faith engaged in the business of a druggist, and only upon the petition of at least twelve citizens of the township or city wherein such business is located, certifying that the applicant is a person of good moral character, and lawfully engaged in the business of a druggist. The applicant must also file a bond in the sum of twenty-five hundred dollars conditioned that he will not use, sell, barter, nor give away liquors except as the law provides. (In places of less than five thousand population, the bond is for one thousand dollars.) Any regular practising physician, where necessary in case of actual sickness, may give a written or printed prescription for liquor, having first filed an affidavit with the probate judge to the effect that he is a practising physician, and that he will not prescribe intoxicating liquor unless in case of actual sickness and when necessary for the health of the patient, etc. Only upon prescription from a physician who has filed such an affidavit, a druggist may sell liquor for medical purposes; and for scientific and mechanical

purposes, only upon a written or printed application with affidavit, setting forth the name, residence and occupation of the applicant, the kind and quantity of liquor, the purpose for which it is required, etc. A false oath is punishable like other perjury. For selling or manufacturing without a permit, the penalty is a fine of from one hundred dollars to five hundred dollars, or imprisonment from thirty to ninety days, for first offense, and severer punishments for subsequent offenses. Places where intoxicating liquors are sold or manufactured contrary to law, may be declared nuisances and their proprietors and owners shall, if a notice to close is served upon them and disobeyed, be punished accordingly. Any person who shall by gift or sale cause the intoxication of another, is liable to pay to any one who takes care of the latter a reasonable compensation, and five dollars a day for the time he is cared for. Also every person who is injured in person, property or means of support by any intoxicated person, or in consequence of such intoxication, may recover damages from the party who supplied the liquor. Any city, county or state officer whose duty it is to prosecute violators of the prohibitory law and who fails to do so, shall be fined not to exceed five hundred dollars, and forfeit his office.

KENTUCKY.

Collection of Debts.

Arrest:—A debtor can only be arrested in cases where he is about to leave the state, having concealed or removed his property with intent to defraud creditors.

Attachment:—The property of the defendant, or of a garnishee, may be attached, in an action for the recovery of money, where the defendant is a non-resident or foreign corporation; or has been absent four months; or has left the state or the county of his residence, or concealed himself, or has removed or is about to remove his property, or has sold or disposed or is about to sell or dispose of his property, with the fraudulent intent to cheat, hinder or delay his creditors.

Garnishment:—There is a garnishment process which may be resorted to when no property can be found in the possession of the debtor himself, which is not exempt.

Exemptions:—A *bona fide* housekeeper with a family resident in the state, may have personal property exempt as to all debts contracted since June 1, 1884, as follows: Two work beasts, or one and a yoke of oxen; or in lieu of each beast or yoke of oxen, other personal property to the value of seventy-five dollars; two plows and gear, or in lieu of each, other property to the value of seven and one half dollars; one wagon and set of gear, or cart or dray, or other personal property to the value of fifty dollars; two axes, three hoes, one spade, one shovel; two cows and calves, or other property in lieu of each cow, or cow and calf, to the value of twenty-five dollars; sufficient beds, beddings, and carpeting for family use; loom and wheel, all yarn spun and cloth manufactured by the family sufficient for family use; one cooking stove and utensils; all table ware and cutlery on hand for use; books to the value of fifty dollars; two saddles, bridles, etc.; one table, six chairs, or chairs to the value of eight dollars; one bureau, one washstand, one wardrobe, one cradle; all the poultry on hand; ten head of sheep, or other property to the value of twenty-five dollars; all the family wearing apparel; sufficient provisions for the family for one year, or in lieu thereof, other property or growing crop not to exceed fifty dollars in value for each member of the family; provender for the live stock, or in lieu thereof, other property to value of seventy-five dollars; all washing apparatus to value of fifty dollars; one gun to value of fifty dollars; all arms and equipments of a militia-man; one sewing machine, all family portraits and pictures. (Where other property to a certain value is allowed in lieu of specified articles, it is only in case the latter are not possessed by the debtor.)

Also on all debts and liabilities contracted since June, 1866, so much land, including dwelling-house and appurtenances, as shall not exceed one thousand dollars in value; and on all debts and liabilities contracted since May, 1870, the libraries of preachers, lawyers, physicians and surgeons, and their instruments, to value of five hundred dollars, and one horse withcart or dray for laboring men. The wages, not to exceed fifty dollars, of all persons who work for wages, are exempt, except for debts contracted for food, raiment or house-rent for family. Tools not exceeding one hundred dollars in value for mechanic who is *bona fide* householder with family.

Interest.

The legal rate of interest is six per cent., contracts for a greater rate are usurious, and the penalty is the forfeiture of the excess of interest above the legal rate.

Insolvency.

A voluntary assignment of his property may be made by a debtor for the benefit of all his creditors. No preferences in favor of any special creditors are allowed.

Statute of Limitations.

All actions for the recovery of real estate, actions on written contracts or judgment debts, must be brought within fifteen years. No disability can extend the time longer than thirty years. On unwritten contracts, express or implied, or for trespass to real or personal property, or on bills of exchange, drafts, or accounts between merchants or their agents, five years. On a merchant's account for goods sold and delivered, or any article charged in a store account, within two years from the first of January next succeeding the respective dates of the delivery of the articles charged. For personal damages, libel, slander or breach of promise, one year.

Wills.

Any person of sound mind, and twenty-one years of age, except a married woman, may make a will of realty and personalty. A married woman may by will dispose of any estate which has been legally secured to her separate use. With the assent of her husband she may also dispose of all her personal estate, but he may revoke his assent at any time before the will is probated. She has no power to dispose of her real estate by will, unless the deed or other instrument by which such property was secured to her separate use, expressly empowered her to do so.

Two subscribing witnesses are required to every written will, except olographic wills. Nuncupative wills are only good when made by soldiers and seamen in actual service.

The marriage of a testator or testatrix revokes a previous will, except when the will is made by virtue of a special power (as in the case of a married woman's will of realty) for the disposal of property which would not, in any case, have descended to the testator's heirs. The birth of a child after a will is made, revokes the will to this extent only; that if said child lives to majority, he takes such portion of the estate as would have come to him in the absence of any will.

A homestead cannot be disposed of by will so as to deprive the wife of it.

A married woman cannot be appointed executor or administrator. The marriage of a woman who is acting in such capacity, terminates her authority and power to act.

Descent and Distribution of Property.

The real estate of an intestate descends equally to his children, the descendants of any deceased child taking his share. If no children, it goes equally to his father and mother; if no mother, all to father; if no father, half to mother, the residue to brothers and sisters and their descendants; if none, all to mother; if no parent, to brothers and sisters and their descendants; if none, one half goes to paternal, and the rest to maternal kindred, in a certain prescribed way, or if no kindred on one side, all goes to that on the other. If no kindred, all goes to the surviving

husband or wife of the intestate, if any; or if there is no such survivor, to the kindred of the deceased husband or wife.

If one dies intestate without children or their descendants, having real estate of inheritance, the gift of either of his parents, such parent, if living, inherits it. If he is an infant, the whole of his realty goes to the parent from whose side it came, or if dead, to the kindred of such parent; if no such kindred, then to the other parent or his or her kindred. An infant's personality is distributed as if he were of age.

Collateral kindred of the half blood inherit only half as much as those of the whole blood.

Personal estate is distributed in the same way as real estate, except that a husband takes the whole of his wife's personality; and that the widow has one third of the husband's if there are children, or one half, if no children.

Curtsey and Dower.

Common law curtesy and dower prevail, with trifling alterations.

Divorce.

Causes for divorce to both parties are as follows: Impotency; living separate without cohabitation for five years next before application.

Divorce may also be granted to the party not in fault, for abandonment by the other party for one year; adultery; conviction of felony; loathsome disease; force, duress, or fraud in contracting the marriage; uniting with any religious society which forbids marriage.

Also to the wife when not in like fault, for confirmed habits of drunkenness for one year or more, accompanied with wasting of his estate and lack of suitable provision for his wife and children; for such habitual cruel and inhuman treatment for six months as shows a settled aversion to her, or as permanently to destroy her peace and happiness; for such cruel beating, or injury, or attempt to injure, as shows an outrageous and ungovernable temper, and probable danger to life, or great bodily injury by her remaining with him.

Also to the husband for pregnancy of the wife at the time of marriage by another than the husband, and without the latter's knowledge; for adultery, or such lewd, lascivious behavior as shows her to be unchaste; and for habitual drunkenness for one year, when the husband is not in like fault.

Divorce from bed and board may be given for any of the causes which allow divorce, or such other as the court in its discretion may deem sufficient.

The plaintiff must have resided a year in the state. Suit must be brought within five years of the act complained of. Either party to an absolute divorce may marry again; but there shall not be granted to any person more than one divorce, except for the causes for which a divorce may be granted to both husband and wife, and to the party not in fault against the other for adultery. All property of each is restored by divorce, and if the innocent wife has insufficient estate of her own, a reasonable allowance may be given her out of her husband's.

Married Women.

The husband in Kentucky has the use of his wife's real estate, with power to rent it on a three years' lease, and to collect the rents. She cannot convey it, unless he joins in the conveyance. It is not liable for his debts, but is liable for her ante-nuptial debts; also for debts contracted

by her after marriage for necessities for herself and family—including the husband—but to collect such debts from her estate, there must be given to the creditor a promise in writing signed by her. The husband is only liable for the ante-nuptial debts of his wife so far as he received property with her.

If the husband is imprisoned or abandons his wife, or if she comes and lives in the state without her husband, a court of equity may empower her to use his property and to do all business as if single, until such time as he may be willing and able to provide for her. Also while living together, husband and wife may present a joint petition to any court having chancery jurisdiction requesting that she be empowered to transact business in her own name, and if certain conditions be fulfilled, the power will be given, when her property will become liable for all her debts and contracts. Unless such power be given, she cannot make contracts in her own name, or buy goods on the credit of her separate estate (except for necessities as stated above), or sue or be sued alone.

But her wages and earnings are her own, and not liable for her husband's debts and she can make bank deposits, draw checks, and receipt for the money, as though single. And though the common law doctrine so largely prevail here, courts of equity are liberal, often treating husband and wife, for many purposes, as distinct persons.

Miscellaneous.

Age of Majority.—The age of majority is twenty-one for both sexes. To marry below that age, the consent of parents or guardians is necessary. But the marriage of a female ward discharges her guardian from his trust, and she may demand a settlement with him. A father who is less than twenty-one may appoint a guardian for his minor child by will.

Mechanics' Liens.—Mechanics and material men have a lien upon the improvements, and upon the interest which the employer has in the land. It dates from the commencement of work, and it is good for twelve months from the completion of the work. But in order to secure his lien, the claimant must file a statement of it in the county clerk's office within sixty days from the time he ceases work, or furnishes the material. Laboring men, employed in manufacturing establishments have a lien on the property of the same for wages due within sixty days before an assignment of the property of such manufactories for any purpose.

Age of Consent.—The "age of consent" is twelve years. For rape of a child below that age, the punishment is death, or imprisonment for life, at the discretion of the jury; for attempt to commit such rape, it is imprisonment from five to twenty years; and for rape on one above the age of consent, imprisonment from ten to twenty years or death, at the discretion of the jury. The unlawful taking of any unmarried girl under fourteen years, without her consent, from the possession of her parent or any person having the lawful custody of her, against the will of such person, is punishable by fine or imprisonment or both. The unlawful taking away or detention of any woman against her will, with intent to effect her marriage with any person, or to cause her to yield herself to any person, is punishable by imprisonment.

Intoxicating Liquors.—Upon a petition signed by at least twenty legal voters in any civil district, town or city, the judge of the county court shall order that a poll be opened at the next regular state, town,

city or county election therein, for the purpose of taking the sense of the legal voters upon the question of prohibition. If a majority of ballots be contrary to such sale, no licenses shall be issued, and it will be unlawful to make such sales in such place. But this restriction does not apply to any manufacturer or wholesale dealer, who sells only at wholesale, nor to druggists who sell for medicinal purposes on a prescription made and signed by a regular practising physician, for a person who is actually sick and where such liquor is absolutely required as a medicine. This prohibition continues for two years, after which another ballot may be ordered. Nearly three-fourths of the state is, or very recently was, under prohibition by virtue of this law. It is forbidden to sell or buy liquor within one mile of any place of public worship during divine service, except in houses authorized by law. Also forbidden to sell or give liquor to a minor without a written order from his father or guardian; or to any known inebriate; and if notice has been given in writing by the wife or relative of such inebriate, forbidding the sale or giving of liquor to him, such wife or relative may also recover twenty dollars as damages.

LOUISIANA.

Collection of Debts.

Arrest.—A debtor cannot be arrested and imprisoned to secure payment of a debt, though he may be arrested to secure his appearance to answer to the suit. A non-resident cannot be arrested unless it appears that he has absconded from his own state.

Attachment.—An attachment may issue against the property of a debtor if he is non-resident, or has left the state or is about to leave, or has concealed himself, or has disposed of his property or is about to do so, with the intent to defraud creditors.

Garnishment.—One who has, or who is suspected to have in his possession, property of a debtor's, or to owe him money (except for personal service), may be made a party to the suit against the latter, and may be compelled to deliver up the property, or to pay the money, to satisfy the creditor's claim.

Exemptions.—The sheriff or constable cannot seize the linen and clothes of the debtor or his wife; nor the bed, bedding or bedstead of himself or family; nor his arms and military accoutrements; nor the cook-stove and utensils, dining table and chairs, dishes and table cutlery; nor wash tubs, smoothing irons, or ironing furnaces; nor family portraits of the debtor, nor musical instruments played or practised on by any member of the family; nor the tools and instruments, books, and sewing machines, necessary in the exercise of his or her calling, trade, or profession. Laborers' wages are also exempt, and all claims for personal servitude, including the salaries of officers.

There is also exempt to every head of a family, or person having a parent or other person dependent on him or her for support, the *Homestead, bona fide* owned by the debtor and occupied by him, consisting of lands, buildings, etc., whether rural or urban. But to claim the benefit of the homestead exemption law, he must have previously executed a written declaration of homestead, containing certain specified statements, and sworn to and recorded the same in the book of mortgages for the parish wherein the homestead is situated.

Also to every head of a family as above stated, there is exempt one work-horse, one wagon or cart, one yoke of oxen, two cows and calves, twenty-five head of hogs or one thousand pounds of bacon or pork, whether these exempted articles be attached to a homestead or not; and on a farm, the necessary corn and fodder for the current year, and necessary farming implements.

But the entire property thus exempt to the head of a family shall not exceed two thousand dollars in value; and no husband shall be entitled to these exemptions, whose wife owns in her own right, and is in the actual enjoyment of property or means, to the value of two thousand dollars.

Whenever the widow or minor children of a deceased person are left in necessitous circumstances, they shall be entitled to receive from the succession of their deceased husband or father a sum which, added to the amount of property owned by them, or either of them, in their own right, will make up the sum of one thousand dollars, and this amount

shall be paid them in preference to all debts except those for the purchase money of articles, and the expenses of selling the property of the deceased.

Interest.

The legal rate of interest is five per cent., but eight per cent. may be stipulated for.

Insolvency.

A debtor may go into voluntary insolvency and thereby obtain a release from all his debts, provided a majority of his creditors in number and amount agree that he may do so. If guilty of fraud in making such surrender of his property, as by concealing any part of it, or concealing or altering any of his books of accounts, or giving any unjust advantage or preference to any creditor, he may be arrested, and if convicted, may be imprisoned, and forever deprived of the advantage of the insolvent law.

Also a debtor may be forced to surrender his property for the benefit of his creditors, under certain circumstances.

Statute of Limitations.

Actions to recover realty must be brought within ten years, if the claimant in possession holds the estate in good faith and under a show of title; within twenty years if the claimant in possession is not acting in good faith; and thirty years of possession will bar the right of recovery by the rightful owner, even though the former occupied without any show of title whatever. Judgment debts, stated accounts, and mortgages, are good for ten years. Actions on open accounts for goods sold, etc., must be brought within three years from the time when the articles were furnished; on promissory notes, whether secured by mortgage or not, and bills of exchange, within five years from maturity.

A debt which has been outlawed can be revived only by the express acknowledgment of the debtor and his promise to pay. If the original evidence of indebtedness was in writing, the new promise also must be; if oral, that also may be oral.

Wills.

The provisions of law concerning wills in Louisiana are very peculiar and complicated. They are of three kinds; nuncupative or open testaments, mystic or sealed testaments, and olographic testaments. The nuncupative testaments are of two kinds; those by "public act," are dictated by the testator to a notary public, who writes it down, uninterruptedly, in his presence, and that of witnesses, of whom there need be but three if they reside in the place, or five if they reside elsewhere. The testator and witnesses must sign the will, if able to write. A nuncupative will "by private act," may be written by the testator or some one at his dictation, in the presence of five witnesses residing in the place, or seven who reside out of it; or in country places, three resident, or five non-resident witnesses may be enough. Testator and witnesses must sign if able to write.

The mystic or secret testament must be written by the testator or another, signed by the testator, inclosed in an envelope and sealed up, and then presented as his will, to a notary and to seven witnesses, who superscribe and sign it together with the testator himself. One who cannot write, cannot make this kind of will.

The olographic testament is entirely written, dated and signed by the testator, not differing from olographic wills elsewhere.

No woman can witness a will. Nor can men below the age of sixteen years; nor those who are deaf, dumb, or blind, or pronounced by the criminal laws incapable of exercising civil functions. But women, married or single, may make wills.

A testator is only permitted to dispose by will of a certain part of his estate, called the disposable portion. The rest belongs of right to his ascending and descending heirs, who are called "forced heirs," because they cannot be deprived of their *legitimé*, as their portion is called. Nor can one dispose of his property by any gift during life, so as to cut off this absolute right of inheritance. If he has but one legitimate child (or the descendants thereof), the portion of such heir or heirs is one third of the property, and he may dispose of the other two thirds. If two children or descendants thereof, their portion is one half; if three or more, they may claim two thirds, and the owner can dispose of but one third. If there are no children or their descendants, but a parent or parents, the owner may dispose of two thirds of his property by gift during his life or by will. But forced heirs may be deprived of their *legitimé*, by the effect of disinheritance by the testator, for just cause, executed in a formal manner, exactly similar to one of the forms prescribed for testaments. The causes enumerated are ten in number, nine of which set forth specifically certain kinds of cruel treatment by a child of his or her parent, and the tenth is the marriage of a minor child, without the consent of parents. Also a child may disinherit a parent for any of seven specified causes, principally for cruel treatment of the child.

It is not permitted to leave property to one person in trust for another.

A married woman cannot act as executor without her husband's consent, unless there has been a legal separation of property between them.

Descent and Distribution of Property.

Real and personal property of an intestate descends equally to all legitimate children, and the descendants of any deceased child take his share. If no children, one half of the property goes to the intestate's parents, the other to his brothers and sisters and their descendants; if one or both parents be dead, his or their share goes to the brothers and sisters, and their descendants. If there are none, the property goes to more remote kindred, first to ascendants, then to collaterals.

Ascendants always have exclusive claim of inheritance to any real estate which was given by them to the deceased, if he dies without children. [For rights of husband and wife in each other's estate, see "Curtesy and Dower."]

Curtesy and Dower.

There is no common law curtesy or dower. At the death of husband or wife, the survivor takes half the common property, the other half together with the separate property of deceased going to his heirs, or by his will.

When the wife brought no dowry, or an inconsiderable one compared to her husband's condition, if either dies rich, leaving the other in necessitous circumstances, the latter takes from the estate what is called "the marital portion," that is, one fourth absolutely of the entire property if there are no children; but if there are children not exceeding three, the marital portion can only be claimed for life; and if more than three, the marital portion consists only of the use for life of a child's share; thus, if

there are five children, the widow or widower takes only one sixth of the property for her or his life, and she or he is also bound to include in this portion any legacy that may have been left to her or him by the will of the other. If a man or woman contract a second or subsequent marriage, having children by a former one, he can give to his wife, or she to her husband, either during life or by will, only one third part of his or her property; but he may give it either absolutely or for life.

Divorce.

Divorce may be given at once for the adultery, or sentence to infamous punishment, of either party. For the other causes to be named, a sentence of separation from bed and board may be given, which may be followed in one year by a decree of divorce if no reconciliation shall have taken place meanwhile between the parties. The causes are habitual intemperance, excess, cruel treatment or outrages, if such intemperance or ill-treatment is of a nature to render their living together insupportable; also for public defamation, abandonment, attempts against the other's life, or when either party has been charged with an infamous offense and has fled from justice.

At divorce, each party takes back the separate property that he or she brought into the marriage, and one half of the community property after payment of debts against it.

Married Women.

The relations of husband and wife in Louisiana are peculiar, being those of the French laws under which the state was first settled. Marriage is considered to be a kind of partnership, and all property acquired during marriage, with its profits, the earnings of the parties, and the income of their separate estates, constitute a common property, belonging to both, liable for all household expenses, and to be equally divided at the death of either party. The husband conducts all business matters relative to the common property, and may sell it, but cannot give it away.

Each party retains his or her separate estate, which is liable for its owner's debts, contracted before or after marriage, but the wife cannot convey hers without her husband's consent, neither can she bind it by debts, or mortgage it unless he consents. She may manage her estate herself, or he may manage it for her, but he cannot sell it, and if he mismanage it in any way, she may have it legally separated from his. She will then be liable, in proportion to her fortune and to his, for the household expenses and education of the children. If he has no property, she may be compelled to bear the whole of these expenses out of her own. The wife has a mortgage upon her husband's real estate, as security for all moneys received by him on her account (which, however, must be recorded, to be good against third persons). With his consent, she may renounce this mortgage in favor of another; or may renounce all her rights in his property, or in the common property.

A married woman may become a public merchant, and may then execute all contracts concerning her business, as if single. The husband is also bound by such contracts, if a community of property still exists between them. She is considered a public merchant if she carries on a separate independent trade, but not if she only makes sales for her husband in his business.

But married persons may stipulate that there shall be no partnership

between them; and in this case the wife preserves the entire right of managing all her property. She also must contribute to the household expenses, etc., to the degree agreed upon by their contract; or if no agreement be made, she will be liable therefor to the extent of one half her income. But whether separated in property or not, she cannot bind herself for her husband's debts, contracted before or during the marriage. And he cannot so sell or dispose of the common property as to fraudulently deprive his wife of her equal right therein. If he do so, she may have an action at his death against his heirs, in support of her claim in one half the property, by proving the fraud.

There are many other peculiarities of the marital relation in this state, which, however, cannot be more specifically referred to, for lack of space.

Miscellaneous.

Age of Majority.—The age of majority for both sexes is twenty-one years. But if a minor over the age of eighteen years wishes to be relieved from the disabilities of minority, and to assume the liabilities of an adult, he may petition the district or parish judge for emancipation. The written assent of his guardian (or "tutor") must be given to the petition, or if living, that of his father or mother or both; unless the petition be made on the ground of ill-treatment, refusal to support, or corrupt examples.

Women.—Women over twenty-one years of age are eligible for any office of control or management under the school laws.

Mechanics' Liens.—A workman has a lien for the price of his labor, on any movable which he has made or repaired, while the article continues in possession of the debtor. Overseers have a lien for the current year's salary, on the crop and proceeds thereof; also for all money expended by them in carrying on any farm or plantation, and for necessary supplies furnished. All classes of workmen have a lien for their wages, on the buildings they help to construct, and material men for materials furnished in such construction. And the seller of real estate has a lien on it for the purchase money. There are also many other specified liens, or "privileges" as they are called in this state.

Age of Consent.—No "age of consent" is fixed. The punishment for conviction of rape is death. It is a crime, punishable by imprisonment with or without hard labor, nor to exceed five years, to unlawfully take any male child under fourteen or any female child under twelve years, with or without his or her consent, from the custody of parent, guardian or tutor; and all persons aiding, advising or abetting therein, are equally guilty.

Intoxicating Liquors.—A ballot may be taken of the legal voters in any ward or parish to determine whether or not licenses shall be granted for the sale of intoxicating liquors in such ward or parish, as often as the police juries of the several parishes, the municipal authorities of the several towns and cities, or the city council of New Orleans, may deem necessary, but not oftener than once a year. Subject to such vote, the authorities above named have the exclusive power of making such rules and regulations for license or prohibition as they may deem advisable. It is forbidden to sell liquor to minors. For keeping a grog shop without license, the penalty is a fine of from one hundred dollars to five hundred dollars, or in default of payment, imprisonment not less than fifteen days nor more than four months.

MAINE.

Collection of Debts.

Arrest.—A debtor may be arrested if the debt exceeds ten dollars, in case he is about to leave the state with his property. No woman can be arrested for debt.

Attachment.—Attachments upon real or personal property of a defendant, which is not exempt, issue in every action as a matter of course. But no attachment can be made before a debt is payable.

Garnishment or Trustee Process.—There is a process, called in this state a "trustee process," by which property or money in the hands of a third person may be attached for debt; but the wages of the debtor earned within the preceding month, not exceeding twenty dollars, are exempt from such attachment, unless it be on a claim for necessities. The wages of a debtor's wife and minor children are also exempt.

Exemptions.—Personal property of a debtor is exempt as follows: Clothing of himself and family; bedstead, bed, and bedding for each two members of the family; other necessary household furniture to the value of fifty dollars; family portraits, Bibles and school books in actual use; copy of state statutes, library worth one hundred and fifty dollars, pew in use and cemetery lot; one cooking and all warming stoves, charcoal, ten cords of wood, five tons of anthracite and fifty bushels of bituminous coal; ten dollars worth of lumber, wood or bark; all produce till harvested; one barrel of flour; thirty bushels of corn, grain and potatoes; half an acre of flax and manufactures therefrom for use; tools of trade; sewing machine worth one hundred dollars; one pair of working-cattle or one pair of horses or mules worth three hundred dollars, and hay to keep them through the winter; one harness worth twenty dollars, for each horse or mule; a horse or ox sled, two swine, one cow and a heifer under three years, or two cows if no oxen, horse, or mule; ten sheep with their wool, and lambs till one year old, and hay enough to keep them through the winter; fifty dollars' worth of domestic fowls; one plow; one cart or truck wagon; one harrow; one yoke with bows, ring and staple; two chains, one mowing machine; one boat of two tons employed in fishing and owned exclusively by an inhabitant of the state; life and accident insurance policies, except the excess of annual cash premiums for two years above one hundred and fifty dollars.

There is also exempt a lot of land and buildings worth five hundred dollars, if properly recorded as a *Homestead*; but this is liable for all charges for work done thereon.

Interest.

Legal rate of interest is six per cent., but any rate may be agreed upon in writing. No usury laws.

Insolvency.

Proceedings in insolvency may be had when the claims against an insolvent debtor amount to three hundred dollars. They may be voluntary or involuntary. Involuntary proceedings may be begun against the debtor who has absconded from the state leaving property therein, within six months after such absconding. The discharge of a debtor at the

close of proceedings does not release him from any debt which he created by fraud or embezzlement, or in any capacity of trust for another.

Statute of Limitations.

Actions to recover realty must be begun within twenty years. Judgment debts are good for twenty years, and so are sealed contracts and witnessed promissory notes; unsealed contracts, whether written or oral, express or implied, are good for six years; actions for assault and battery, slander and libel, or false imprisonment must be brought in two years. A new promise in writing, or part payment will renew an obligation after it has been barred by the statute.

Wills.

Any person of sound mind, of either sex, married or single, may make a will of realty and personalty at the age of twenty-one years. Three subscribing witnesses who have no beneficial interest in the will, are required to all written wills.

Nuncupative wills may be made by soldiers and seamen. Also in the last sickness of the testator, when it must be made at his house, or at the place where he resided ten days before making it; unless he is suddenly taken sick and dies elsewhere. In order to dispose of more than one hundred dollars in this way, there must be three witnesses to the testator's declaration, who were requested by him to act as such. One of the witnesses to any nuncupative will must reduce the declaration to writing within six days after it is spoken. If a longer time elapses, the will must be proved within six months after being spoken, or it will be valueless.

The authority of a woman who is executrix, administratrix or guardian, is terminated by her marriage.

Descent and Distribution of Property.

The real estate of an intestate descends as follows: To children equally, the descendants of any deceased child taking his share; if no children, to intestate's father; if no father, in equal shares to mother, brothers and sisters, descendants of any deceased taking his share; if no surviving brothers or sisters, to intestate's mother—excluding the descendants of any deceased brother or sister; if no mother, to next of kin claiming through nearest ancestor; if no kindred, it goes to husband or wife; if there is no such survivor, it escheats to the state. The estate of a minor child who dies unmarried, if inherited from either parent, goes to the children of that parent, but otherwise, half blood inherits the same as whole blood. An illegitimate child is heir of his mother, and of a father who legally acknowledges him or adopts him, or if his parents intermarry, he inherits from them both. If an illegitimate and unrecognized child dies without lawful children, his mother or her heirs inherit his property, unless he is married, when they take half, and his wife (or her husband, if the child be a woman) takes half.

The personal estate of an intestate is distributed in the same way, after payment of debts and charges, and allowances by law and by the court to the widow, if any, but subject however, to the following conditions: If the intestate leaves a widow or husband, and children, the survivor takes one third, and the children the residue; if no children, the survivor takes one half, and the residue goes as has been shown in regard to realty; if no kindred, the survivor takes the whole.

Curtsey and Dower.

The right of curtesy is abolished. Husband and wife has each the same interest in the real estate of the other, the survivor taking one third of it for life, if the estate is solvent, and if there are no children or descendants of any, one half instead of one third.

The survivor may elect within six months after probate of the will, whether to take the provision which may be made therein for her or for him, or to take the third interest given by law.

Divorce.

Causes for divorce are as follows: Adultery; impotency; extreme cruelty; utter desertion for three consecutive years next before action is brought; gross and confirmed habits of intoxication; cruel and abusive treatment; or on application of wife, where the husband, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her.

All divorces are from the bonds of matrimony, but they are *nisi* in the first instance, but may become absolute after six months on application of either party to the clerk of the court, unless it be otherwise ordered. The party in whose favor the divorce is granted cannot marry again until two years after the final absolute decree, except by special permission of the court; and the party against whom the decree is given cannot marry again within the two years in any case, nor can he afterward except on permission of the court. A review of the case may be granted within three years, if neither party has married again.

The libellant must have resided here when the cause occurred; or must have resided here in good faith one year prior to commencement of proceedings; or the parties must have been married here, or must have lived together here after marriage.

The court may order alimony to the wife pending proceedings, also a sum to cover expenses of the suit; and may give permanent alimony with the decree, when it is for fault of the husband for any cause; she may also have a restoration of her real and personal estate, and she may have dower in his realty as if he were dead.

If residents go out of this state for the purpose of obtaining a divorce for causes occurring in the state while they lived here, or for causes which do not authorize divorce here, such a divorce shall be void here.

Married Women.

A married woman, of any age, may own in her own right all her real and personal estate, and may manage, sell, convey, and devise the same by will, without the joinder or assent of her husband; except real estate that has been directly or indirectly conveyed to her by her husband, or paid for by him, or given or devised to her by his relatives. Such real estate (unless it was conveyed to her as security or in payment of a *bona fide* debt actually due to her from her husband) cannot be conveyed by her unless he joins her in the conveyance. Property given her by her husband without a valuable consideration from her, may be taken in payment of his debts contracted before the conveyance to her.

A wife may release the control of her property to her husband, and authorize him to dispose of its income for their mutual benefit; but she may at any time, in writing, revoke this authority.

If the husband is imprisoned or abandons her, she may be empowered

by the supreme court to make contracts under seal, and to do all business relative to his property in her own name and be responsible therefor as if single.

Her estate is liable for her own contracts, but not for his. She may sue and be sued alone in reference to her property, may hold her earnings for personal labor, and sue for them alone. The husband is not liable for her ante-nuptial debts.

A wife may carry on any trade or business on her own account, and no action will lie against the husband on her contracts therein or for goods furnished.

Prior to 1844, the husband had a life estate in his wife's real estate; in cases where the marriage took place, and the property was acquired, previous to that date, the wife cannot convey it unless he joins in the conveyance, and his life estate in such property may be taken by his creditors on execution for his debts.

Miscellaneous.

Age of Majority.—The age of majority for both sexes is twenty-one, but they may marry at eighteen without consent of their parents; and the marriage of a girl of any age terminates the authority of her guardian.

Women.—One of the six trustees appointed by the Governor for government of the State Insane Hospital, must be a woman, and one of the three composing the committee of visitors, must also be a woman. Women may be authorized by the Governor to solemnize marriages, administer oaths, and take acknowledgments of deeds.

Guardians.—If the father is dead, the mother, if competent to transact her own business, and while she remains a widow, shall have the care of the person and education of her minor children; otherwise these duties shall devolve upon the guardian.

Mechanics' Liens.—Those who have furnished labor or material on any building or its appurtenances, may have a lien thereon for their pay, but must enforce it by attachment within ninety days after completion of the work or after the last material furnished. Many other cases are specified, as liens on lime for personal services in digging and hauling the rock; on granite quarried, cut or dressed; slate mined or quarried; bricks manufactured; hemlock bark; logs or lumber; corn, grain or fruit for canning or preserving; on vessels for labor and material, etc. In all these cases, the lien must be very promptly enforced, or else it is lost.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment for any term of years, or for life. An assault with intent to commit the crime on a child below ten years, is punishable by imprisonment from one to twenty years; above that age, imprisonment not exceeding ten years or fine not exceeding five hundred dollars. Any abduction of a woman unlawfully and against her will, and compelling her by force, menace or duress, to be married or yield herself to the abductor or to any other, is punishable by imprisonment for any term of years or for life; and any abduction with intent to compel her as above, by imprisonment from one to ten years. Fraudulently and deceitfully enticing or taking away an unmarried female for the purpose of prostitution, or any inveigling or enticing any female before reputed virtuous, to a house of ill-fame, is punishable by imprisonment.

Intoxicating Liquors.—A constitutional amendment prohibits the manufacture or sale of any intoxicating liquor except cider; and any one who manufactures, or manufactures and sells any liquor thus prohibited may be fined one thousand dollars and imprisoned for two months. For any illegal sale without manufacture, the first offense is punishable by a fine of from thirty dollars to one hundred dollars, or imprisonment from thirty to ninety days, or both; subsequent offenses, fine not more than two hundred dollars and imprisonment from two to six months. It is forbidden to bring liquor into the state for unlawful sale, and all such liquors, and all other liquors unlawfully kept and intended for sale, may be seized by the authorities and destroyed. Promissory notes given for liquor are not collectible, unless in the hands of an innocent third party. Traveling liquor peddlers or dealers are punishable by a fine of from twenty to five hundred dollars and costs. A commissioner is appointed by the Governor, whose duty it is to furnish municipal officers of towns with pure, unadulterated intoxicating liquors, to be kept and sold for medicinal, mechanical and manufacturing purposes. He cannot make a profit of more than seven per cent. on such sale. Municipal agents authorized to keep and sell liquors for the purposes named, can buy of no other person, and must keep a record of all purchases and sales, open to inspection. The agents are appointed by the selectmen of any town, and mayor and aldermen of any city. No sales are allowed under any circumstances to any Indian, soldier, intoxicated person; any minor without the written direction of his parent, master or guardian; nor to any intemperate person of whose habit he has been notified by his relatives, or by the aldermen, selectmen or assessors of any city, town or plantation.

MARYLAND.

Collection of Debts.

Arrest.—There is no arrest for debt.

Attachment.—An attachment may be placed on property of a defendant when he is a non-resident, or absconds; or has concealed, removed or disposed of his property with intent to defraud his creditors, or is about to do so; or when he fraudulently contracted the debt or obligation. Wages or salary of any kind cannot be attached until it is due, and when due, one hundred dollars out of it is exempted.

Garnishment.—Property of the debtor in the possession of another, or money due him, may be attached in the hands of such third party, thereby serving the purpose of a garnishment.

Exemptions.—Exempted from execution in favor of any *bona fide* resident of the state are his clothing and his family's; and books and mechanic's tools used for earning a living;—but they may be taken under an execution issuing upon a judgment for seduction or breach of promise of marriage. The debtor may also select and exempt one hundred dollar's worth of other property, real or personal, or if such selection cannot conveniently be made, the sheriff must pay over to the debtor one hundred dollars after selling his property, out of its proceeds. There is no *Homestead* exemption.

Certain articles are exempt from being taken for non-payment of rent, viz: All property of any boarder or sojourner at any hotel, tavern, public or private boarding house; any vehicle not the property of the tenant, that is in any shop for repairs; every horse, carriage, harness, saddle, etc., not the property of the tenant; every spinning-wheel, loom and sewing-machine which is loaned or hired to the tenant; every stove or musical instrument rented or loaned to the tenant if the contract of such renting or loaning has been written, signed and acknowledged before a justice of the peace.

A widow may have exempt from the property of her deceased husband, if he does not leave real estate to the value of one thousand dollars, personal property to the value of one hundred and fifty dollars, unless there are no children and the estate is insolvent, when she can only have exempt property to the amount of seventy-five dollars.

Interest.

The legal rate of interest is six per cent.; any higher rate is usurious, the penalty for which is forfeiture of the excess above that sum.

Insolvency.

Any debtor may apply for the benefit of the insolvent law who has not been discharged as an insolvent at any time within two years previously.

Any person may be declared insolvent upon the petition of one or more creditors whose debts aggregate to the sum of two hundred and fifty dollars, when such person is absent from the state with intent to defraud creditors; or who has concealed himself or his property to avoid legal process; or has made any assignment, gift, sale or conveyance of his property with intent to defraud his creditors; or who being a banker, broker, merchant, manufacturer, or trader, when insolvent, or in contemplation

of insolvency, executes a deed or conveyance giving preference to one or more creditors, or allows a judgment to be entered against him by connivance; and in some other cases. But preference may be given to clerks and other employes for wages and salaries contracted not more than three months previously.

The insolvent law applies to partnership, but not to married women.

Statute of Limitations.

Actions to recover real property must be brought within twenty years. Judgment debts, bonds and all sealed contracts are good for twelve years; and unsealed contracts, written or oral, for three years, within which time also all actions must be brought for the recovery of personal property or for damages for injury to property, real or personal.

Wills.

To make a valid will of realty the testator must be of sound mind and twenty-one years of age if a man, or eighteen if a woman. A married woman may make a will of all her property as if single; except as to property acquired by her before 1860, if she was married before that date.

No will of realty or personalty is valid since August, 1884, that is not put in writing, signed by the testator, and witnessed at his request and in his presence by two or more subscribing witnesses. Olographic wills are no longer good, nor nuncupative wills except in the case of soldiers and seamen in actual service.

It is forbidden to create any perpetuity by a will, in favor of any charitable use or otherwise.

A married woman may be executrix or administratrix of a will, provided her husband with two sureties, gives a bond for her faithful performance.

Any person may execute his will, properly seal it up in an indorsed wrapper and deposit it for safe keeping till his death or till he demands it, with the register of wills, on payment of fifty cents.

Descent and Distribution of Property.

Real property of an intestate descends as follows: To the children of the intestate equally, children of any deceased child taking his share. If no children, and the property came to intestate by inheritance from his father's side, it goes to the father; if no father, to intestate's brothers and sisters and their descendants, of the father's blood; if none, to the paternal grandfather or his descendants; if no paternal kindred, to the intestate's mother, or her kindred. If the property came by inheritance from his mother's side, it goes to her, and to relatives on her side in the way already shown, and in default of any maternal kindred, to the father and his kindred. If the property came to the intestate in any other way than by inheritance, it goes, in default of children or their descendants, to brothers and sisters of the whole blood and their descendants, or lacking such, to those of the half blood; if none, to father; if no father, to mother; if no mother, to grandfather and other remoter kindred. If there be no kindred, the property goes to husband or wife surviving; or if dead, to kindred of deceased husband or wife; or if there had been more than one husband or wife and all are deceased, it is divided equally among the kindred of all.

Personal property is distributed as follows: If the intestate leaves a child or children and a widow, she takes a third, and the residue is divided among the children and the parents of any deceased child; if no

children, but a parent, brother or sister or children thereof, the widow takes half, and such relatives the other half; if no such relatives, the widow takes all. If no widow or children, the father inherits; if dead, the mother, brothers and sisters and descendants; if no brothers, sisters, nor descendants thereof, the mother; if no mother, more distant kin. If no widow or relations of intestate within the fifth degree, the property goes to the school fund of the state. Illegitimate children inherit from their mother and each other.

If a married woman dies intestate and leaving children, her husband takes a life estate in her property, real and personal; if no children, he takes a life estate in her realty, and the whole of her personalty absolutely.

Curtsey and Dower.

Common law dower prevails with the addition that a widow may also take dower in her husband's equitable estates, though not to the exclusion of any lien or claim for purchase money. The widower's right of curtesy may also apply to his wife's equitable estates, with the same proviso. But though during her life, a wife cannot convey away her realty without her husband's joint deed, it seems that she may deprive him of his right to curtesy by her will. If she dies without a will, his curtesy attaches, whether any child has been born of the marriage or not.

Divorce.

Causes for divorce from the bonds of matrimony are as follows: Adultery; canonical causes of impediment existing previous to marriage; abandonment for three years; fornication by wife before marriage. The court may decree that the guilty party shall not marry again within the other's life time.

Causes for divorce from bed and board are vicious conduct, cruelty of treatment, abandonment and desertion.

The court may give to the wife the property which she had at marriage, or the value of the same, and may also give alimony pending the divorce, and permanent alimony, and may decide as to the custody of the children. Alimony may be given without divorce, if one only wishes her support without her freedom.

Married Women.

All property, real and personal, belonging to a woman at marriage, or acquired by her after marriage in any way (unless conveyed to her by her husband in fraud of his existing creditors), constitutes her separate property, and is not liable for her husband's debts, but is for her own. She may carry on business with it, and may dispose of it by will; but cannot convey it, unless her husband joins in the deed; she is bound by the covenants in the deed. Her earnings are hers, and these she may invest and reinvest, sell and dispose of without her husband's joinder. The husband is not liable for his wife's ante-nuptial debts. The wife may insure her husband's life for her sole use.

The relation of creditor and debtor may exist between husband and wife, if she conveys or loans to him her separate estate, he expressly promising to repay her, and a widow may sue the executors of her deceased husband, on such a promise. Any devise or bequest to her in her husband's will is in lieu of dower, unless otherwise expressed. If he is convicted of bigamy, she takes her dower at once in his realty, and one third of his personalty as if he had died intestate, and he forfeits all claim to her property.

Miscellaneous.

Age of Majority.—The age of majority for both sexes is twenty-one, though women at eighteen may receive their property from their guardians and give a good release therefor; and may also act as administratrix or executrix, and make a valid will at that age. Also any wife who is a minor may unite with her husband in a conveyance to release her dower, and it will be sustained if equitable.

Wife Beating.—Any person who brutally assaults and beats his wife is guilty of a misdemeanor, for which he may be sentenced to be whipped not exceeding forty lashes, or imprisoned for a term not exceeding one year, or both.

Mechanics' Liens.—All buildings erected or repaired, are subject to a lien for one fourth of their value, in favor of mechanics and others who have done the work or furnished materials; also all boats and vessels, and all machines built or repaired. But the claim must be filed within six months after the last work done. (Charles, Calvert, and St. Mary's counties are exempted from the laws relating to mechanics' liens, except as they apply to boats or vessels.)

Age of Consent.—The "age of consent" is ten years. The punishment for rape is death or imprisonment from eighteen months to twenty-one years, at the discretion of the court. Forcible abduction for purposes of prostitution, of any female under eighteen years of age, from her usual place of abode, or from the control of her parent or guardian, is punishable by imprisonment not exceeding eight years. Forcible abduction of any white child under the age of sixteen years, for any purpose, may be punished by imprisonment for from five to twelve years.

Intoxicating Liquors.—A local option law prevails, acts having been passed by the legislature of 1884, authorizing certain counties and localities to submit to the vote of the people the question whether or not intoxicating liquors should be sold therein; also acts prohibiting its sale in some counties, and regulating the matter of license in others. In the balance of the state, licenses are freely given to all who apply, the fee being very low, and few restrictions imposed. There is a penalty prescribed for selling without a license, for selling or bartering liquor to minors, and for selling on Sunday or election days. Where prohibition prevails, druggists are forbidden to sell except upon a physician's prescription, and penalties are imposed on physicians who prescribe except in case of actual sickness and necessity therefor as a medicine, and on any one who procures such a prescription by deceit.

MASSACHUSETTS.

Collection of Debts.

Arrest.—A debtor may be arrested upon proper affidavit by the creditor that the debt is for more than twenty dollars, that the debtor has property, not exempt, which he does not intend to apply to its payment, and that he—the debtor—intends to leave the state. Or when a judgment has been recovered against a defendant, and it is not paid, if the action is one of tort, he may be arrested without any affidavit; and when one of contract (the damages amounting to twenty dollars or more) the affidavit need only set forth any one of several specified facts going to show a fraudulent intent on the debtor's part not to pay the judgment debt. The first and most usual of these, is that the debtor has property, not exempt, which he does not intend to apply to the payment of the debt; and where this is charged, before he can be arrested, he may be examined for the oath for the relief of poor debtors, and if it proves that he has no such unexempted property, he may be discharged, and cannot be again arrested on that debt for three years. This is what is known as "the poor debtor process."

No woman can be arrested except for a tort or crime. She may, however, be summoned before a court of insolvency to be examined on oath as regards her property, when judgment has been recovered against her in an action of contract.

Attachment.—All real and personal estate of defendant, which is not exempt, may be attached as a matter of course when action is brought against him. When a live animal or perishable property is attached, it may be sold, and the proceeds held by the attachment; so also a sale of any property attached may be made, if all parties consent in writing thereto. An attachment may be dissolved if the defendant gives a sufficient bond, with sureties, promising to pay to the plaintiff the amount of any judgment that he may recover.

Garnishment or Trustee Process.—There is a trustee process by which property or money in the hands of another may be attached to satisfy any judgment that may be recovered in an action of contract, or of tort except for malicious prosecution, slander and libel, assault and battery. A corporation may be summoned as trustee, as well as an individual. When the trustee is an employer of the debtor, twenty dollars are exempt from attachment in his hands, unless the debt is one for necessities for the debtor and his family, when only ten dollars are thus exempt and the surplus may be taken. The wages of the debtor's wife or minor children cannot be trusted for his debts. Any amount may be trusted for, but if less than ten dollars is recovered, the plaintiff pays the costs of suit.

Exemptions.—The following articles are exempt: Necessary clothing of debtor and his wife and children; bedstead, bed and bedding for every two members of the family; one iron stove for warming, and fuel not over twenty dollars in value, procured for use of the family; other necessary household furniture not over three hundred dollars in value; Bibles, school books and library used by himself and family, not above fifty dollars in value; one cow, six sheep, one swine, two tons of hay; tools, implements, and fixtures, necessary for his trade or business, not above one hundred dollars in value; materials and stock designed and

necessary for his trade or business, not above one hundred dollars in value; provisions necessary and procured for the family not above fifty dollars in value; one pew in church (unless for taxes); boats, tackle and nets in actual use by fishermen, to value of one hundred dollars; uniform, arms, etc., of a militia-man; rights of burial and tombs in use; one sewing machine in actual use by debtor or his family, to the value of one hundred dollars; shares in co-operative associations not exceeding twenty dollars in value in the aggregate.

Also a *Homestead* not exceeding eight hundred dollars in value, is exempt to every householder having a family, if it is properly recorded as a homestead, and is in actual use as such.

Interest.

Six per cent. is the legal rate of interest, but any rate may be stipulated for in writing. No usury laws.

Insolvency.

Voluntary proceedings in insolvency may be instituted by any inhabitant of the state who owes debts to the amount of two hundred dollars. Involuntary proceedings may be instituted by any creditor whose claim amounts to one hundred dollars, in several specified cases, action being taken within ninety days. The Massachusetts insolvent law is very similar in its terms and provisions to the late United States bankruptcy law. No private assignment for the benefit of creditors is legal; any proceedings of the kind must be had in accordance with the insolvent laws.

Statute of Limitations.

Actions to recover real property must be brought within twenty years. Judgment debts are also good for twenty years, so are all sealed contracts and covenants; also promissory notes that have the signature of a witness upon them, if the action is brought by the original payee or his executor or administrator; and bills, notes or other evidences of debt issued by a bank. Other contracts not under seal, whether written or oral, are only good for six years. So also action must be taken within six years to recover arrears of rent (except upon leases under seal, which may be sued upon at any time within twenty years); to recover personal property, or damages for injuries to it; and all other actions of tort, except those for assault and battery, false imprisonment, slander or libel; and except actions against executors, administrators, guardians or others in a position of trust, for the taking or conversion of personal property, all of which must be brought within two years.

Persons under disabilities may bring action within the time limited, after removal of the disability. Limitations do not run against persons out of the state. Actions by and against the executor or administrator of a deceased person must be presented within two years from the granting of letters testamentary, or of administration.

A new promise must be in writing and signed, to renew the obligation. A partial payment on the debt, after it is barred by the statute, will revive it, but only as against the party making it, not as against any other party who may have been jointly liable.

Wills.

Any person of sound mind and twenty-one years of age, may make a valid will of realty and personalty.

A married woman may, with her husband's written consent, dispose of her entire property by her will. Without his consent, she may dispose

of one half her personalty, and of the title to all her realty after his life estate by the curtesy shall have ended; or, in case the right of curtesy does not attach for lack of children, after his life interest in one half her realty shall have ended. Also a married woman deserted by or living apart from her husband for justifiable cause, may obtain a decree of court establishing this fact, and may then dispose of all her real and personal estate by will or by deed, without his consent.

Three subscribing witnesses are requisite. Nuncupative wills are good only when made by seamen at sea and soldiers in actual service. A wife is not a competent witness to her husband's will.

A woman's marriage revokes her will made previously, or at all events, suspends it, for there is some doubt whether or not its force would be revived if she survive her husband. It is settled, however, that the marriage of a man and the birth of a child utterly revokes his will, unless, by its terms, it anticipates the marriage and provides therefor.

A widow may, within six months after probate of her husband's will, waive any provision made for her thereby, and take instead that portion of his estate which she would have taken had he died intestate.

Executors or other persons having charge of wills, must produce them for probate within thirty days after knowledge of death of testator.

Illegitimate children inherit from their mother, and she from them. The marriage of the parents of an illegitimate child, who is acknowledged by his father, legitimatizes him.

A married woman may be executrix, administratrix, guardian or trustee, and bind herself and the estate as if unmarried.

Descent and Distribution of Property.

The real estate of an intestate descends as follows: If a widow or widower survive, but no children, such survivor takes it in fee to the amount of five thousand dollars; and if a widow, she takes also one half for life of all the other real estate which he owns at his death, unless she prefers instead to have her dower interest in such other estate; and if a widower, he takes also a life estate by the curtesy in all her other real estate, or if curtesy fails for lack of children having been born, he takes a life interest in one half such other estate.

If there are children, the widow or widower has curtesy and dower, and the remainder of the property goes to the children in equal shares, the descendants of any deceased child taking his share. If the descendants who survive are all in the same degree of kindred to the deceased, they share equally; otherwise, they take according to the right of representation. If there are no children or their descendants, the property goes to the parents of the intestate in equal shares, or if one be dead, the whole to the surviving parent. If no parent, then to brothers and sisters equally, and to descendants of any deceased; or if all are dead, leaving descendants, these take the property in equal shares if they are of the same degree of kindred to the intestate, otherwise they take by representation. If there are no such relatives, the property goes to the next of kin. If no kindred, the whole goes to the intestate's widow or widower, if there be such survivor. If not, then the property escheats to the Commonwealth. Kindred of half blood inherit equally with whole blood.

Personal estate is distributed according to the same rules, with the exception that where the intestate is a married woman, the husband takes one half her personalty if there are children; if no children, the whole; and if the intestate is a married man, his widow takes one third of his

personalty if there are children; if none, she takes it all up to five thousand dollars, and one half the excess above ten thousand dollars; and if there is no kindred, she takes the whole.

Curtsey and Dower.

Common law rules as to curtesy and dower prevail, with the changes already noted in "Descent and Distribution of Property."

Divorce.

Causes of divorce are as follows: Adultery; impotency; extreme cruelty; utter desertion for three consecutive years next preceding the libel; gross and confirmed habits of intoxication; cruel and abusive treatment; gross, or wanton and cruel refusal or neglect of husband to maintain his wife, if of sufficient ability to do so; separation without consent from the other and uniting for three years with any religious society that believes the relation of husband and wife unlawful; sentence to confinement at hard labor for five years in state prison, jail or house of correction.

All divorces are now from the bonds of matrimony, but they are decrees *nisi*, to become absolute after the expiration of six months from their entry (if no reconciliation has taken place), on application of either party to the court. The decree may be opened up within the six months by application of any person interested.

The parties must have lived together as husband and wife in this state; or if the cause occurred elsewhere, they must have previously lived together here, and one of them must also have lived here when the cause occurred. Or if they have never lived together here, but were inhabitants of the state at the time of their marriage, and the libellant has lived here three years next preceding the libel, it is sufficient to give jurisdiction; but otherwise, the libellant must have resided here five consecutive years next preceding the libel, in which case jurisdiction will be given unless it appears that said libellant has removed into the Commonwealth for the express purpose of obtaining the decree.

Upon a divorce for adultery or imprisonment of the husband, the wife is entitled to dower; otherwise not, unless the husband dies after a divorce *nisi* on her application, which has not yet become absolute. If the divorce is for adultery of the wife, she is still entitled to retain all her property for her life, except that the support of minor children may be decreed therefrom. If for other cause than her adultery, she may retain her realty, and such possession of her personalty in her husband's possession as the court may allow. Alimony may be decreed to either.

After a divorce from the bonds of matrimony, either party may marry again, except that the party against whom the decree was given shall not marry within two years from the date of the final decree.

Married Women.

All property of whatever kind, owned by a woman at marriage, and all which comes to her after marriage in any way except from her husband, is her separate property, free from her husband's control or debts. She may also acquire from her husband, as gifts, wearing apparel and personal ornaments and other articles necessary for her personal use, to the value of two thousand dollars, but not in fraud of his creditors. Her wearing apparel is her own, however, whether especially given to her or not. Other personal property found in her possession, is deemed, in absence of evidence, to be her husband's.

She has full and entire control of all her property, and may dispose of it as she sees fit, except that she cannot deprive her husband of his

life estate in her realty, the whole or one half, as the case may be. [See "Descent and Distribution of Property."]

All her earnings for labor performed by her for any person other than her husband and children, are hers alone. She may sue and be sued alone in all actions, and may make contracts of all kinds, except that she can make no binding contract directly with her husband, and cannot form a business partnership with him. Her contracts need not be in reference to her separate estate; they may be executory in their nature. A married woman's promissory note or indorsement is binding upon her, unless her husband is a party to it in such a way that to enforce it, a contract between them must be proved, and as has been already said, no contract between husband and wife is binding.

In order to carry on business on her separate account, free from her husband's debts, she must file a "married woman's certificate," at the clerk's office of the city or town; and the husband likewise, if he wishes to be free from liability for the debts incurred by her in her separate business, may file a certificate. Such "married woman's certificate," whether filed by husband or wife, must set forth the names of both, the nature of her business, and the place of its location, giving street and number if practicable; and whenever the place or the nature of the business is changed, a new certificate must be filed.

The wife of an insane man may obtain leave from the probate court to convey or mortgage her realty without her husband's signature, his guardian being required to join in the deed; but a portion of the proceeds may be ordered reserved for the use of the husband in lieu of curtesy, the income of such portion being paid to the wife during her life; to her husband, if he survive her, during his life; and at his death, this portion, with the rest of her estate, goes to her legal representatives.

The husband is not liable for any ante-nuptial debt of his wife; nor for any judgment recovered against her after marriage, unless it be on account of her separate business, when no certificate has been filed.

As they cannot contract together, no transfer of property can be made directly between them, though this may be done through the intervention of a third party.

Miscellaneous.

Age of Majority:—The age of majority for both sexes is twenty-one, though women may marry without their parents' consent at eighteen.

Women:—Women may be attorneys at law; and women who are attorneys may be appointed special commissioners to administer oaths, take acknowledgments of deeds and take depositions. Women may vote for school committee and may hold school offices. They may also serve as overseers of the poor. Women, and minors under eighteen years of age, shall not be employed more than ten hours a day in any factory.

Taxation:—Property to the amount of five hundred dollars of a widow, or married woman over twenty-one years old; of any person above the age of seventy-five; or of any minor whose father is deceased, is exempt from taxation; provided that the whole estate of such person does not exceed one thousand dollars, exclusive of property otherwise exempted, and provided further that it be not conveyed to such person for the purpose of evading taxation.

Testimony:—Husband and wife are not allowed to testify as to private conversations during marriage, nor can either be compelled to testify for or against the other in a criminal proceeding.

Mechanics' Liens.—Any person furnishing labor or materials for the erection, alteration or repair of any building, by agreement with or consent of the owner, has a lien upon it for his debt. To claim the lien, he must file a statement of the matter in the registry of deeds within thirty days after labor or materials furnished, and must begin suit to enforce it within ninety days.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment for life or any term of years. Fraudulently enticing or taking away an unmarried woman of a chaste life, for the purpose of prostitution or of any unlawful sexual intercourse, is punishable by fine or imprisonment or both; as is also any aiding or abetting such abduction, or the administering to any woman or girl of any drug, matter or thing with intent to stupefy or overpower her for the unlawful purpose already named; or the inducing any person of either sex below the age of eighteen years, and of chaste life, to have unlawful intercourse.

Intoxicating Liquors.—A "local option" law prevails, by which each city and town decides by annual ballot of its legal voters whether or not any licenses shall be granted therein for the sale of intoxicating liquors. Where they are granted, no sale is allowed between the hours of eleven at night and six in the morning; nor on Sunday, unless the licensee is also an innholder; nor on any election-day; nor to a drunkard, or intoxicated person, or minor. Licenses are of six different classes, that of the first class authorizing the sale of liquors of any kind, to be drunk on the premises, for which the fee is from one hundred dollars to one thousand dollars. The other classes decrease the rights and powers of the seller, and the fees are correspondingly diminished, till the fee for the sixth class license, which is to druggists and apothecaries for the sale of liquors for medicinal, mechanical and chemical purposes only, is one dollar.

Makers of cider and native wines may sell the same without license, not to be drunk on the premises; also importers in original casks.

Licenses of the first three classes (covering the selling of any spirituous or malt liquors to be drunk on the premises) cannot be granted in any place within four hundred feet of a public school on the same street. It is forbidden to use a screen at the door or window of any place where liquor is sold by which to prevent a view from without of the business or the interior of the premises; such screen or obstruction voids the license.

Whoever violates any provision of his license, or of the license law, may be fined from fifty dollars to five hundred dollars, or imprisoned from one to six months, or both; also the license is forfeited, and no new license can be granted to the licensee for a year.

The husband, wife, parent, child, or guardian of any person who has the habit of drinking intoxicating liquor to excess, may give notice in writing, signed by him or her, to any person, requesting him not to sell or deliver liquor to the person having such habit. If the person so notified sells within twelve months, or permits such person to loiter on the premises, the person giving notice may, in an action of tort, recover of the person notified such sum, not less than one hundred dollars or more than five hundred dollars, as may be assessed as damages.

Any person injured in person, property or means of support by an intoxicated person, has a right of action for damages against any person who, in whole or in part, caused such intoxication, and against the owner of the premises if the occupant thereof sells without a license.

MICHIGAN.

Collection of Debts.

Arrest.—There is no arrest for debt.

Attachment.—An attachment may issue against the property of a debtor when the debt exceeds one hundred dollars, if the defendant has absconded or is about to abscond from the state, or is concealed therein, to the injury of his creditor; or if he has concealed or removed any of his property, or is about to do so, with intent to defraud; or if he fraudulently contracted the debt; or if he is a foreign corporation, or a non-resident, or has not resided in the state for three months last past.

Garnishment.—There is a garnishee process by which property of the debtor or money due, or to be due, in the hands of another, may be attached by the creditor if he cannot get his debt otherwise. To any householder with family, twenty-five dollars due for personal services, is exempt from garnishment.

Exemptions.—The following property is exempt: All clothing of the defendant and his family; all arms and military accoutrements; library and school books not over one hundred and fifty dollars in value; family pictures; seats in church and burial lots, etc. To each householder, ten sheep and their fleeces, two cows, five swine; fodder for animals for six months; provisions and fuel for family for six months; household goods, furniture and utensils not over two hundred and fifty dollars in value; tools, implements, stock, apparatus, vehicle, horse, etc., necessary to enable any person to carry on the trade, profession, occupation or business in which he is engaged, not over two hundred and fifty dollars in value; one sewing-machine.

Also to every householder, a *Homestead* not exceeding forty acres and the house thereon, if in the country; or a house and lot in city or village not over fifteen hundred dollars in value, is exempted.

None of the property named, except mechanical tools and implements of husbandry, is exempt from execution on a judgment rendered for purchase money of the property itself. No lien can be created by mortgage or otherwise on any of the property named, except the tools, implements, etc., used in trade or profession, unless the debtor's wife, if he has one, also signs such mortgage or other lien.

Interest.

The legal rate of interest is seven per cent., but parties may stipulate in writing for a higher rate not exceeding ten per-cent. The penalty for usury is a forfeiture of the excess. Negotiable paper in the hands of a *bona fide* holder, is not affected by being usurious.

Insolvency.

An insolvent debtor may obtain a discharge from his debts by making a voluntary assignment of all his property (except that which is exempt) for the benefit of all his creditors, without preference.

Statute of Limitations.

Real actions must be brought within five years when defendant claims title under a deed made upon a sale by an executor, administrator, guardian, sheriff or other duly authorized officer of court, by virtue of some

judgment or other process of court; within ten years, when the sale was for taxes; in all other cases within fifteen years, except when the party entitled to bring suit is not in the United States or the British North American Provinces; when thus absent, suit must be brought within twenty years. Judgment debts given in a court of record are good for ten years, and so are contracts made under seal. Contracts not under seal, whether written or oral, and all actions for the taking or injury of personal property, are good for six years: actions for slander, libel, assault and battery, false imprisonment, trespass upon land, two years.

A new promise in writing, or a part payment of the debt, will revive it after it has been outlawed.

Wills.

Any person of sound mind and twenty-one years of age, of either sex, married or single, may make a valid will.

Two subscribing witnesses are required to all written wills. Nuncupative wills may be made by soldiers and sailors in actual service, to dispose of all their wages and other personalty; testators in their last sickness may also dispose of property to the value of three hundred dollars by such a spoken will.

A homestead cannot be alienated from the widow and children, by a man's will.

An attempt was recently made in this state to provide for the probate of a will during the lifetime of the testator in certain cases, but the law was quickly pronounced unconstitutional and void by the court.

Descent and Distribution of Property.

The real property of an intestate descends as follows: To children equally, descendants of any deceased child taking his share. If all children are dead, leaving descendants, these inherit equal shares, if they are of equal degree of kindred to the intestate; otherwise they take by right of representation. If no children or descendants of any, to his widow for her lifetime, and at her death to his father and mother equally, or if no mother to the father alone. If no widow, all goes to his father and mother, or if no mother, to the father; if no father, to mother, brothers and sisters equally, children of any deceased brother or sister taking his or her share; if no brother or sister surviving, to intestate's mother, exclusive of children of deceased brothers or sisters. If none, to next of kin. If no kindred, to husband or wife in fee simple, if one survive. If not, the property escheats to the state for the use of the primary school fund.

Out of the personal property of an intestate, the widow has all wearing apparel and ornaments of herself and deceased, household furniture not over two hundred and fifty dollars in value, and she may select other personal property to amount of two hundred dollars. Widow and children are also entitled to such provision out of the personal estate as is necessary for their support during the settlement of the estate; if the estate is insolvent, this support is given them only for one year after letters of administration are granted. If the estate does not exceed one hundred and fifty dollars over the allowances to widow and family, the probate court may, at its discretion, give her the whole; if it amounts to more, the debts are paid out of it. Of the residue after payment of debts, if there is more than one child, the widow takes one third; if but one child, widow takes one half; if no children, widow takes the whole if less than one thousand dollars; if more, half goes to the widow, the residue to

intestate's father, or if no father, to mother, brothers and sisters equally; if no such relatives survive, widow takes all. If no widow, it is distributed the same as real estate. The personal property of a married woman is distributed just as that of a married man.

If a husband makes a provision for his wife by will, at his death she may elect whether she will take the provision, or will take her distributive share; if she makes the latter decision, she may take as she would under the statute up to the amount of five thousand dollars, and of the residue of the estate, she can only take half of what the statute would give her had he died intestate.

Curtsey and Dower.

There is no estate by the curtesy, nor anything equivalent thereto. Dower remains in force as at common law. A widow is also entitled to remain in the dwelling-house of her husband one year after his death without rent, and to her reasonable sustenance out of his estate for the same time.

Divorce.

Causes of divorce from the bonds of matrimony are as follows: Adultery; impotency; sentence for three years to prison, jail or house of correction; desertion for two years; habitual drunkenness; and the court may, at its discretion, grant a divorce to any party resident here, whose husband or wife shall have obtained a divorce in another state. Sentence to imprisonment for life in any prison, jail or house of correction, absolutely dissolves the marriage of such party without any decree of divorce or other process, and no subsequent pardon will restore him or her to conjugal rights. Divorce from bed and board for a limited time or permanently, may be given for extreme cruelty, whether by violence, desertion or otherwise; and for gross and wanton refusal or neglect by husband, being of sufficient ability, to provide for wife; or if the court thinks best, a divorce from the bonds of matrimony may be given for these causes.

The court may provide for the custody of children, and except when the divorce is for the wife's adultery, she takes her real estate as if her husband were dead, and the court may also give her the personalty which she brought into the marriage or its equivalent in money; and if this is not sufficient for the support of herself and children, she may have alimony. Where divorce is for adultery of the husband, or his habitual drunkenness, or his sentence to imprisonment for three years or more, she may have dower in his lands. So when he is imprisoned for life, she may take her own property and dower in his, as if he were dead, without any decree of divorce.

If persons below the age of consent to marriage (eighteen for males and sixteen for females) marry and separate during such nonage, and do not live together afterward; or if the consent of one party to any marriage be obtained through force or fraud, and they shall separate and not voluntarily live together afterward; or if either party to any marriage performed in the state is at the time insane or an idiot, such marriage is void without any decree of divorce or other legal process. So also all marriages which are prohibited by law on account of consanguinity or affinity between the parties, or on account of either having a former husband or wife then living.

Married Women.

All property of whatever kind, owned by a woman at marriage, or

afterward acquired by her in any way whatever, is her separate estate, over which she has as full control as though she were unmarried. Husband and wife may contract with each other in many cases, and may convey property to each other; and the wife is liable for her contracts and torts, the husband not being liable therefor. She must have her husband's consent to carry on business in her own name. She has full power to make all contracts which concern, and are in relation to her separate estate, but she cannot make a binding contract concerning any other matter, which is not beneficial either to herself or her estate; thus she can not bind herself as a surety for her husband, or for any other person, unless her suretyship is expressly stated to be given on behalf of her own estate, and upon a sufficient consideration. She may mortgage her property for another's debt, this being a specific pledge of it. She may dispose of her property at any time, entirely independent of her husband's consent, by contract, deed or will. The husband is bound to provide necessaries for his wife and family as at common law, and her separate property would probably not be bound by his debts contracted for that purpose; though if she chooses to contract for such necessaries in her own name, she could thereby bind it. He, in turn, is entitled to her society and services as at common law.

Miscellaneous.

Age of Majority.—The age of majority is twenty-one, but women at sixteen years, and men at eighteen, are capable of contracting a legal marriage. The marriage of a female ward terminates the guardianship as to her personal custody, but not as to her property. Her husband may be appointed guardian of her property.

Women.—Women of full age, who have resided in any school district three months next preceding any school meeting held therein, and who have property liable to assessment for school taxes therein, may vote at such meetings on all questions; and those who have no such property, but are the parents or legal guardians of any children included in the school census of the district, may vote on all questions not directly involving the raising of money by tax. Any woman of the class first named, is eligible to election or appointment to office in such school district. Women may be attorneys at law.

Testimony.—A husband or wife cannot be examined as a witness against the other without the latter's consent; nor without such consent can either be examined during or after the marriage, as to any communication made by one to the other during the marriage.

Mechanics' Liens.—Any person who, under express or implied contract with the owner or lessee, puts any labor or material upon any building, machinery, wharf or other structure, has a lien on it therefor. Any sub-contractor, laborer, or material-man who performs or furnishes labor or material to any such original contractor or sub-contractor, also has a lien for the same. In order to secure a lien as against third parties, a verified written statement must be filed in the office of the register of deeds of the county where the land lies, within ninety days if by a principal contractor, and within thirty days if by a sub-contractor, laborer or material-man.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of any child below that age, or for rape, is imprisonment for life or any term of years. It is a crime to take or

entice away from her parent, guardian, or other person having the legal charge of her, any girl under sixteen years of age, for the purpose of prostitution, concubinage, or marriage; and a crime also to seduce any unmarried woman.

Intoxicating Liquors:—For retailing spirituous or intoxicating liquors, an annual license fee of three hundred dollars must be paid; for wholesaling, five hundred dollars; for retailing or wholesaling malt, brewed or fermented liquors only, two hundred dollars; but no fee need be paid by any druggist who sells for medical, chemical, scientific or sacramental purposes only. In villages of a certain class, the authorities have full power to regulate, restrict or entirely prohibit the sale of liquors. It is unlawful to sell adulterated liquor; to sell to minors or students, or intoxicated persons, or to permit children to remain where liquor is sold; or to sell on election day; or to any Indian or person of Indian descent; or to any person who is in the habit of getting intoxicated; or to any person whose husband, wife, parent, child, guardian or employer shall forbid the same, whether such sale be made by a druggist or any one else. Any person who is injured in person, property or means of support by any intoxicated person or by reason of such intoxication, may have a right of action to recover damages for such injury, against the person or persons who sold or gave away the liquor, whether spirituous or malt.

MINNESOTA.

Collection of Debts.

Arrest.—Arrest for debt is abolished.

Attachment.—An attachment may be placed on the property of a debtor against whom a cause of action has accrued, if he is a foreign corporation or non-resident, or has departed from the state, or concealed himself, with intent to defraud or delay creditors; or with such intent has assigned, secreted or disposed of property, or is about to do so; or if the debt was fraudulently contracted.

Garnishment.—Property or money due a debtor by a third person may be attached by a creditor of the former, if the property or money amount to ten dollars in value, if suit is in a justice's court, or to twenty-five dollars, if in a court of record. The indebtedness on which such action is taken must be due absolutely, without depending on any contingency; the judgment recovered by the plaintiff must equal ten dollars if suit is in a justice's court, or twenty-five dollars if in a court of record. Wages of laboring men to the amount of twenty dollars are exempt, if earned within three months before issuing process.

Exemptions.—Exempted in favor of a debtor are the following articles: Family Bible, school books, pictures, library and musical instruments; pew in church and burial lot; all clothing of debtor and family; all beds, bedding and bedsteads in use by family; all stoves and appendages thus in use; other household furniture to value of five hundred dollars; three cows, ten swine; one yoke of oxen and a horse, or in lieu thereof, one span of horses or mules; twenty sheep and their wool; necessary fodder for animals for one year, provided or growing; one wagon, cart or dray, one sleigh, two plows, one drag, and other farming utensils, to value of three hundred dollars; one sewing machine; grain necessary for one year's seed, to certain specified amounts; provisions for family one year, provided or growing, and fuel; tools and instruments kept for purpose of trade, and stock in trade not over four hundred dollars in value; library and implements of any professional man. Printing or newspaper office necessities to amount of two thousand dollars and stock in trade to four hundred dollars.

Wages of any laboring man or woman or their minor children, not exceeding twenty dollars, due for services rendered during ninety days next preceding; and all moneys arising from the insurance of any exempt property.

A *Homestead* not exceeding eighty acres with house thereon is exempt in the country; or one lot with house thereon in any incorporated city or town of more than five thousand inhabitants; or if within the platted or laid out portion of any such town, city or village having less than five thousand inhabitants, one half an acre with house and appurtenances thereon. Such homestead is also exempt while occupied by the widow or minor children of any person deceased, who was while living, entitled to a homestead. So if a married man deserts his wife and children.

Interest.

Legal rate of interest is seven per cent., but parties may agree in writing as high as ten per cent. Above this is usurious, and the penalty is forfeiture of all interest and costs, if suit is brought within two years.

All contracts of whatever kind stipulating for usurious interest are void, except negotiable paper in the hands of a *bona fide* holder for value.

Insolvency.

When an insolvent debtor is sued and his property is attached, he may, within ten days after, make an assignment of all his property for the benefit of all his creditors. If he fails to do so, but does instead any act by which any of his creditors might obtain a preference over others in the payment of their claims, then upon petition of any two creditors having claims amounting to two hundred dollars in the aggregate, a receiver may be appointed to take charge of his property.

Statute of Limitations.

An action for the recovery of realty must be brought within twenty years; on judgment of a court of record, within ten years; on a contract, express or implied, or to enforce a trust, or compel an accounting, within six years; also actions of trespass or for conversion or injury of personalty, injuries to the person, or rights of another not founded on obligation, six years; libel, slander, assault and battery, two years; to foreclose mortgages, within ten years from the time when the action accrues. The statute does not run during absence of plaintiff from the state. Parties under disabilities have one year after the removal thereof—but such extension of time cannot exceed five years in all, except in case of infancy.

A promise of payment by which to renew a barred obligation, must be written and signed; but any part payment of the principal or interest will renew it.

Wills.

Any man of sound mind and twenty-one years of age, and any woman of sound mind and eighteen years, married or single, may make a valid will of real and personal property.

Two subscribing witnesses are required, except to nuncupative wills, which can be made only by soldiers and seamen in actual service.

If a child is born to the testator after his or her will is made, and is not provided for by the will or otherwise, and is not mentioned in the will in such manner as to show an intention of disinheritance, he will take such portion as would have been his had there been no will.

Neither husband nor wife can by will or other disposition, deprive the surviving widow or widower of her or his claim to one third absolutely of all the property, real or personal, of which the other may be possessed during the marriage, unless the survivor shall have given a written consent to such will or other disposition.

Claims against the estate of a deceased person must be presented within such time, not less than six, nor more than eighteen months, after appointment of executor or administrator, as may be fixed by the court.

Descent and Distribution of Property.

The real property of an intestate descends as follows: If there be a surviving husband or wife, he or she takes for his or her life, free from debts of the deceased, the homestead of such deceased. Such survivor also takes one third in fee simple of all other real property of which the deceased was possessed at any time during the marriage, subject however, in its just proportion, to the payment of any debts of the deceased which the personal property may not satisfy. But this right may be lost by a written consent to some other disposition of the property, by will or otherwise. [See "Wills."]

The residue of the realty, or if no husband or wife survive, the whole of it, descends as follows: Equally to children, the children of any deceased child taking his share; if none, to intestate's father; if no father, one third to mother, and residue to brothers and sisters; the descendants of any deceased brother or sister taking his or her share. If no brother or sister then the estate goes all to the mother, to the exclusion of children of any deceased brothers or sisters; if no parent, then to brothers and sisters, children of deceased brother or sister taking the latter's share; if none, to next of kin; if no kindred, all to surviving husband or wife; if no survivor or kin, it escheats to the state. There is no distinction between whole blood and half blood, as to the right to inherit.

Personal property is distributed in the same way as realty, after payment of debts and charges, with the exception of the following provisions for the support of widow and children. The same provisions are also made for a surviving widower out of his wife's personalty. All wearing apparel and personal ornaments of the survivor, and wearing apparel of the deceased; household furniture to the value of five hundred dollars, and other personal property to the value of three hundred dollars, to be selected by the survivor. These provisions are made in addition to any provision which may be made by the will of the deceased. The survivor and children shall also have such reasonable allowance out of the personal estate as the probate court deems necessary for their support until the estate is settled. If children have lost both parents, they may be maintained out of the personal estate till they reach the age of ten years. If the whole estate does not exceed three hundred dollars, it may all be given to the survivor or children, after payment of funeral charges and expenses of administration.

Curtsey and Dower.

Curtsey and dower are entirely abolished. Either survivor takes in fee simple, one third of all the real property of which the deceased was possessed during marriage.

Divorce.

Causes for absolute divorce are as follows: Adultery; impotency; cruel and inhuman treatment; sentence to imprisonment in state prison; wilful desertion for three years; habitual drunkenness for one year immediately preceding filing of complaint. Plaintiff must have been a resident of the state for one year, unless the cause be adultery committed by defendant while a resident of this state.

Causes for divorce from bed and board, either for a limited time, or forever, are all in favor of the wife, as follows: Cruel and inhuman treatment; such conduct by husband as may render it unsafe or improper for her to live with him; abandonment by husband and neglect or refusal to provide for her. Both parties must be resident in the state; or the marriage must have been solemnized here, and the wife be an actual resident at time of petition; or if the marriage was solemnized elsewhere, both parties must have been residents here for one year, and wife an actual resident at time of petition.

The court exercises its discretion, in any case of divorce, as to custody of children, and as to alimony, but the entire alimony shall not exceed one third of his personalty, and her distributive right in his realty. If the divorce be for her adultery, she can have no alimony, and her own realty may be withheld. Otherwise her realty will be returned to her, and the court may also require that her personal property be returned.

Married Women.

A married woman in Minnesota holds as her separate estate all property of which she was possessed before marriage, and all that comes to her afterward in any way, including the proceeds of her industry, free from the debts or control of her husband. She may make binding contracts of all kinds and with anybody, including her husband, with the single exception that she cannot contract with him relative either to his or her real estate. And she may dispose of all or any of her property, independently of him, except that to convey her real estate, or to mortgage it except for the purchase money, or to lease it for more than three years, he must join in the conveyance, mortgage or lease. Neither is liable for the other's debts, except that the husband is bound by the common law obligation to furnish necessaries to his wife. She alone is bound by her contracts and her torts.

The marriage of a woman who is an administratrix or executrix does not extinguish her authority as such; but the marriage of a woman who is guardian does, though she may be reappointed.

Miscellaneous.

Age of Majority.—Women are of age at eighteen, but if married while younger, may join husband in deeds of conveyance. Males at eighteen years of age and females at fifteen, may marry. The marriage of a female ward terminates the guardianship.

Guardians.—If the father is dead, the mother, if competent to transact her own business, and not otherwise unsuitable, shall be entitled to the custody and education of her minor children.

Testimony.—Husband or wife cannot testify as to confidential communications, except in actions by one against the other.

Mechanics' Liens.—Whoever furnishes labor or material on any building or boat under a contract with the owner or agent thereof, has a lien thereon for his money, for two years, providing that within six months he file with the registrar of deeds a verified statement of the matter.

Women.—Women may vote on all school matters, and may hold any office pertaining to the management of public schools.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below this age, is imprisonment for life; for rape, imprisonment from ten to thirty years, unless the woman was a common prostitute, in which case, not more than one year. The seduction of any unmarried woman of previous chaste character, by any married man, or by any unmarried man under promise of marriage, is a felony, punishable by imprisonment; but no conviction shall be had on the unsupported evidence of the woman, or if the parties have intermarried. The inveigling, enticing or taking away of any unmarried woman of previous chaste character under the age of twenty-five years, for the purpose of prostitution, and the aiding or assisting at such abduction for such purpose, is a felony punishable by imprisonment.

Intoxicating Liquors.—A local option law prevails, by which the people of any municipal township may decide for themselves whether or not licenses shall be granted therein for the sale of intoxicating liquors. If a license be granted, the annual fee therefor is twenty-five dollars to one hundred dollars. For selling or giving away without a license, a fine may be required of from twenty-five dollars to one hundred dollars. It is forbidden to sell to minors, students, Indians or drunkards, or between the hours of 11 P. M. and 5 A. M.

MISSISSIPPI.

Collection of Debts.

Arrest.—There is no arrest for debt.

Attachment.—Attachments may issue against the property of a debtor if a foreign corporation or non-resident; or has removed, or is about to remove himself or his property out of the state, or absconds or conceals himself; or has concealed or disposed of his property with intent to defraud his creditors; or if he fraudulently contracted the debt.

Garnishment.—There is a garnishee process for attaching property or money of the debtor in the hands of another.

Exemptions.—Property is exempted from execution or attachment as follows: To every head of a family, two horses or mules, or one yoke of oxen; two cows and calves; five head of stock hogs; five sheep; one hundred and fifty bushels of corn, three hundred bundles of fodder, ten bushels of wheat or rice; two hundred pounds of meat; one cart or wagon not over one hundred dollars in value; one sewing machine; household furniture not over one hundred dollars in value; growing crops; one saddle and bridle; fifty bushels cotton seed; forty gallons molasses or sorghum; and one thousand stalks of Louisiana cane. To residents in towns or cities, personal property, selected by the debtor, to two hundred and fifty dollars in value, in lieu of the foregoing articles. To any individual in town or country, with or without family, is exempted his or her wearing apparel; tools or instruments of a mechanic necessary for his trade; agricultural implements of a farmer necessary for two male laborers; books of a student necessary to his education; libraries and instruments of any professional man to value of two hundred and fifty dollars; globes, books, maps, etc. of a teacher. Also laborer's or mechanic's wages to the amount of one hundred dollars. The amount of any life insurance policy not over ten thousand dollars is exempt from debts of deceased.

There is also exempt to every citizen male or female, being a householder and having a family, a *Homestead* not exceeding two thousand dollars in value nor one hundred and sixty acres in extent, so long as it is the actual residence of the debtor; but temporary removals by reason of some casualty or necessity, with the intention of returning as soon as possible, will not forfeit the right to the homestead.

Exempted property vests in wife and children, or husband and children, on death of the owner, free from creditors.

No property is exempt from execution for the purchase money, nor from sale for taxes, nor for debts for labor or material bestowed thereon.

Interest.

The legal rate of interest is six per cent., but parties may stipulate in writing for any rate as high as ten. Above this is usurious, and the penalty on all such contracts made since November, 1880, is forfeiture of all interest.

Insolvency.

There are no insolvent laws, and assignments are not specially regulated by statute.

Statute of Limitations.

Actions for recovery of land must be brought within ten years from
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the accrual of the right of entry, except in case of disabilities. Actions on judgment debts within seven years; but where the judgment was rendered in another state against a citizen of this state, it is good only for three years. Suits on oral contracts must be brought within three years, on written contracts, sealed or not, within six years; actions for trespass, or for taking or injuring personal property, six years; assault and battery, slander and libel, false imprisonment, etc., one year.

Wills.

Any person of sound mind and twenty-one years of age, of either sex, married or single, may make a valid will.

Two subscribing witnesses are required, except to olographic and nuncupative wills.

Nuncupative wills may be made by soldiers and seamen in actual service; also in the time of the last sickness of the deceased at his or her habitation, or where he or she has resided ten days next preceding the death (unless he or she be taken sick and die away from home.) But to bequeath property of greater value than one hundred dollars, it must be proved by two competent witnesses that the testator called on some person present to bear testimony that such was his or her will, or words to that effect.

Claims against the estate of a deceased person must be presented within one year after the publication of notice to creditors to present their claims.

Descent and Distribution of Property.

Real and personal property descends alike as follows: Since Nov. 1, 1880, if an intestate leaves children and a surviving husband or wife, the property is equally divided among them all; if a surviving spouse, but no children, the survivor takes all absolutely. Descendants of any deceased child take his share. If no children, husband or wife, property goes equally to brothers and sisters, children of any one deceased taking such one's share; if none, to intestate's parents, or the surviving parent; if none, to next of kin; if no kindred, to the state.

A widow may elect, within six months of the probate of her husband's will, whether she will take the share left her therein, or the share which the law gives her as stated above.

The appraisers of an estate must always set apart for the widow and children, one year's provisions out of the effects of her deceased husband, or an allowance of money for the purpose of purchasing necessities, including wearing apparel for them all, and tuition of children.

Curtesy and Dower.

Curtesy and dower are abolished.

Divorce.

All divorces are from the bonds of matrimony. The causes are as follows: Adultery; impotency; bigamy; consanguinity or affinity within prescribed degrees; sentence to penitentiary; wilful desertion for two years; habitual drunkenness; insanity or idiocy at time of marriage; habitual cruel and inhuman treatment with personal violence.

The complainant must have been a resident of the state for one year. The court may give alimony to the wife, and decide as to custody of children.

Married Women.

All property of a married woman, coming to her before or after mar-

riage, by her own industry or in any other way, is her separate estate, with regard to which she may contract, with her husband or with any one else, and which is not liable for her husband's debts. She may engage in any trade and bind herself by her contracts relating thereto, or by any other contracts which are for her benefit. She may make a will as if unmarried. If her husband takes her property for his own use, he becomes her debtor, unless he uses the income of it, with her consent, for the support of the family. Gifts or conveyances between husband and wife are void, unless in writing, acknowledged and recorded.

Miscellaneous.

Mechanics' Liens:—Every building, all machinery and fixtures, the land on which they stand, and all water-craft, are subject to liens for labor done and materials furnished on the same. Suit must be brought within six months from maturity of the debt, or the lien is lost. There are also agricultural liens, in favor of employés and laborers.

Age of Consent:—The "age of consent" is ten years. The punishment for criminal knowledge of any child below that age, or for rape, is death, unless the jury shall fix the penalty at imprisonment for life. The penalty for seduction of any female child below the age of sixteen, of previous chaste character, is imprisonment for not more than ten years. But the uncorroborated evidence of the injured party is not enough to convict. It is also a crime to decoy or entice away from its parents, guardian, or other person having legal charge of it, any child under the age of fourteen years, with intent to conceal such child, or for the purpose of prostitution, concubinage or marriage; or any female child above fourteen, against her will.

Intoxicating Liquors:—The sale or giving away of intoxicating liquors is prohibited by special legislation in certain counties, cities, towns and places, in Mississippi, comprising about one half the entire state; and also within certain prescribed distances of certain churches, schools, camp-meetings, etc. Where it is allowed to be sold, a license may be granted by the corporate authorities of towns, or board of supervisors of counties, but only on a petition signed by a majority of the legal voters residing in the town, or in the supervisor's district where such liquors are intended to be sold. License fees are from two hundred dollars to one thousand dollars according to the population, etc. It is unlawful to sell on Sunday, or to minors, or drunkards, or at the time of any election, or to sell adulterated liquors.

MISSOURI.

Collection of Debts.

Arrest.—There is no arrest for debt.

Attachment.—An attachment may be made on the property of any debtor if he is a non-resident, or a foreign corporation; or has removed or is about to remove himself or his property out of the state with intent to defraud or delay creditors; or has concealed himself or property, or has assigned or conveyed it with fraudulent intent; or if the debt was contracted out of the state, and defendant has absconded or secretly removed his property into this state; if the debt was fraudulently contracted; and in a few other cases.

Garnishment.—There is a garnishee process by which to recover property or money of a debtor which is in the hands of another. Wages for thirty days are exempt from garnishment.

Exemptions.—To every individual there is exempt his wearing apparel, and the necessary tools and implements of any mechanic. To the head of a family are also allowed ten head of hogs; ten of sheep and product thereof in wool, yarn or cloth; two cows and calves; two plows, one axe, one hoe and all necessary farm implements for use of one man; working animals to value of one hundred and fifty dollars; spinning wheels, cards, one loom and apparatus for use in private family; all spun yarn, thread and cloths manufactured for family use; hemp, flax, wool, not exceeding twenty-five pounds each; all wearing apparel of family; four beds with usual bedding, and other necessary household furniture not exceeding one hundred dollars in value; provisions on hand for family use not over one hundred dollars in value; arms and military equipments; Bibles and all books used in the family; pew, lettered grave-stones; necessary tools, etc., of any mechanic; and any professional men may select necessary books or medicines in place of other exempted property. Or the head of a family may select in place of the animals and farming implements named above, other property, real or personal, to the value of three hundred dollars.

Also a *Homestead* is exempt to every housekeeper or head of a family, to one hundred and sixty acres in extent, and fifteen hundred dollars in value, in the country; or in cities of less than ten thousand inhabitants, five acres, to the same value; in cities of between ten thousand and forty thousand, thirty square rods of ground to same value; in larger cities, eighteen square rods to the value of three thousand dollars. The homestead must be occupied by the owner to be exempt. It may be conveyed or incumbered as any other property, unless the wife of the owner has filed her claim to it, which must be acknowledged like a deed, and recorded in the county recorder's office; after so doing, her consent is necessary to any conveyance or incumbrance thereof. On the death of the owner, a homestead vests in the widow or minor children, until the death of the widow, and majority of the youngest child. A widow or orphan minor children, or woman whose husband has deserted her, may claim such homestead, if it be not already encumbered at the time when claimed.

There is no exemption against a claim for wages of a house servant or common laborer to the amount of ninety dollars, if suit be brought within six months; nor against seizure and sale for taxes; and no personal

property in the hands of the purchaser, is exempt from execution on a judgment for its purchase money. Nor is any property exempt if the defendant is a non-resident or is about to abscond or leave the state; but if he be a married man and has thus absconded, his wife may claim the exemption.

Interest.

The legal rate of interest is six per cent., but parties may stipulate in writing for any rate not exceeding ten. Above this is usurious, the penalty for which is the forfeiture of the entire interest at the rate of ten per cent. for the use of the common schools.

Insolvency.

An insolvent debtor may make a voluntary assignment for the benefit of all his creditors. But the debtor is not discharged from his debts thereby, unless the estate pays them in full, or unless the creditors assent to such discharge. There can be no preference given to any creditors.

Statute of Limitations.

Actions on judgment debts must be brought within twenty years. Actions for the recovery of real estate within ten years; also all actions upon written contracts for the payment of money or property, and actions on covenants in deeds. Actions on unwritten promises, express or implied, for the payment of money, or upon open accounts, or for taking or injuring personal property, or trespass to realty, or for relief on the ground of fraud (except for the recovery of real estate), must be brought within five years; for slander, libel, assault and battery, etc., within three years. A new promise must be in writing, to renew an obligation once barred.

Wills.

Any man of sound mind and twenty-one years of age, may make a valid will of realty; of personalty at eighteen; and a woman, married or single, may make a valid will of realty and personalty at eighteen.

Two subscribing witnesses are required to all written wills.

Nuncupative wills are good when made by soldiers and seamen in actual service; and also good to the value of two hundred dollars, when made in the last sickness of the deceased, and at his dwelling-house, or the place where he had been residing for ten days or more, unless he was taken sick and died away from home. Two competent witnesses must prove the will, and that the testator asked some person present to bear witness that such was his will, or words to that effect. Such a will must be reduced to writing within thirty days after the words were spoken, and offered for proof within six months after being spoken.

The will of a testatrix is revoked by her subsequent marriage; and of a testator, by his subsequent marriage and the birth of a child, unless some provision has been made for the child by the will or by settlement.

Claims against the estate of a deceased person must be presented within two years after appointment of executor or administrator, but preference is given in settlement of the estate, to claims presented within the first year.

Descent and Distribution of Property.

The real and personal property of an intestate descends as follows: To children equally, descendants of any deceased child taking his share; if none, to parents, brothers and sisters or their descendants equally; if none, to surviving husband or wife; if no such survivor, to grandparents,

uncles, aunts and their descendants. Heirs of the half blood take only half as much as heirs of the whole blood.

If a married man dies without children, the widow takes one half of the estate, and also all the estate which she brought to him by the marriage and which is still undisposed of, providing she makes a written election to take such property (subject to the payment of his debts) instead of her dower, or of any provision which may be made for her by his will. This election must be made within twelve months after the administrator or executor is appointed, and it must be acknowledged and recorded. If there is a child or children, the widow is entitled to a child's share in the personalty.

Curtsey and Dower.

Curtsey and dower prevail as at common law.

Divorce.

Causes of divorce are as follows: Impotency; bigamy; adultery; absence without reasonable cause for one year; conviction during marriage of an infamous crime; habitual drunkenness for one year; cruel and barbarous treatment endangering life of the other; intolerable indignities; that the husband is a vagrant; that he has been anywhere convicted of a felony or infamous crime previous to the marriage; that the wife was pregnant by another than the husband and without his knowledge, at time of the marriage. An application for divorce may be made by any person who has resided one year in the state.

Married Women.

In Missouri, a wife's separate estate includes all her personal property and choses in action, and her personal earnings, whenever or however acquired; and the income of all such property, and of any real property which may be held by a trustee for her use. This separate estate is not liable for the husband's debts, unless contracted for necessities for wife or family, and is free from his control. It is liable for her own ante-nuptial debts. She can contract to a limited degree, and only concerning her separate estate. She can convey any realty of which she may be possessed, only by a joint conveyance with her husband. She cannot be executrix or administratrix. She may make a will, disposing of her personalty and realty, but not so as to affect her husband's curtesy, unless he elect to abide by the will instead of claiming curtesy. He is not responsible for her ante-nuptial debts.

If the husband unjustly abandons his wife, the court may order a provision for her maintenance and that of her children, to be made out of his estate; may authorize her to sell her real estate; may authorize persons holding money or property of his to pay it to her; and she may be entitled to her own earnings and those of her minor children.

Miscellaneous.

Age of Majority.—Men are of age at twenty-one, but may make a will of personalty at eighteen. Women are of full age at eighteen years. Men under twenty-one and women under eighteen cannot marry without consent of parent or guardian.

Guardians.—If the father is dead, the mother is the natural guardian of her minor children, and shall have the custody of their persons and education, and of their estates by giving the usual bond.

Testimony.—A husband or wife cannot testify against the other

except in an action one against the other, and except as to business matters with regard to which one acted as agent for the other. A married woman cannot testify as to any admission or conversation of her husband, whether made to herself or to third parties.

Mechanics' Liens.—Mechanics and others furnishing work or materials for the erection or improvement of any building, etc., are entitled to a lien on the improvement and on one acre of land. Laborers and journeymen within sixty days, original contractors within six months, and all other persons within four months after the debt accrues, must file their lien in the clerk's office of the circuit court of the county where the land is situated. Sub-contractors, laborers and journeymen must give ten days' notice of their intention to file a lien, to the owner of the premises.

Age of Consent.—The age of consent is twelve years. The punishment for criminal knowledge of any child below that age, or for rape, is death, or imprisonment not less than five years, in the discretion of the jury. The seduction and promise of marriage of any unmarried woman of good repute, under twenty-one years of age, is punishable by fine and imprisonment. If the parties have intermarried, it is a sufficient defense. So also the seduction of any girl under eighteen years of age by her guardian, employer, or other person to whose care or protection she may have been confided. Also the fraudulent enticing or taking away of any girl or woman of previous chaste character for the purpose of prostitution.

Intoxicating Liquors.—To sell intoxicating liquor in quantities less than one gallon, a license must be taken out as a dramshop keeper. The state license tax is from twenty-five dollars to two hundred dollars for every six months, and the county tax from two hundred and fifty to four hundred dollars for every six months. A license can be granted only on the petition of a majority of the tax-paying citizens of the municipal township, incorporated town or city, or the block or square in such city, wherein it is proposed to open the dramshop. It is forbidden to keep open on Sundays, to sell to minors, or to habitual drunkards.

MONTANA TERRITORY.

Collection of Debts.

Arrest.—A defendant may be arrested in all civil actions on the ground of fraud, or for wilful injury to person, character or property, knowing the property to belong to another. Also in all cases where the defendant has removed or disposed of his property, or is about to do so, with intent to defraud his creditors.

Attachment.—All property not exempt may be attached in actions on a contract, express or implied, for the payment of money, gold dust, or other property then due, which is not sufficiently secured by a mortgage or lien. An attachment may be had before the demand is due if the defendant is leaving or about to leave the territory with all his or her property, with intent to defraud creditors, or is disposing, or about to dispose of his or her property with that intent.

Garnishment.—Property or money of the defendant in the hands of a third person may be attached to secure a debt.

Exemptions.—All clothing of the debtor and his family is exempt to any bona fide resident of the territory; also chairs, tables, desks and books to the value of one hundred dollars; all necessary household table and kitchen furniture; provisions and fuel actually provided for individual or family use sufficient for two months; one sewing machine to the value of one hundred dollars in actual use; one horse, two cows and their calves, two swine, fifty domestic fowls. Also to a farmer, farming utensils to the value of six hundred dollars, two oxen, one horse or mule and harness, two cows, one cart or wagon, food for such stock for three months; and two hundred dollars' worth of seeds, grain or vegetables actually provided for the purpose of sowing or planting; to any mechanic or professional man, his proper tools, instruments or books; to a miner his dwelling to the value of five hundred dollars, and all his necessary tools or machinery to the value of five hundred dollars, also one horse, mule or two oxen with harness and their food for three months, if such stock is necessarily used for any species of hoisting gear upon the mine. One horse, mule or two oxen, vehicle and harness by which the debtor habitually earns his living, and one horse with vehicle and harness, of physician or clergyman, used in making professional visits, with food therefor for three months. All arms and military equipments required by law to be kept. Also the wages of the debtor earned within the next preceding thirty days, are exempt if necessary to the use of his family residing in the territory and supported by his labor.

Also a *Homestead* owned and occupied by the owner, not exceeding one hundred and sixty acres and for agricultural purposes with the dwelling house thereon, to be selected by the owner; or if in any town plat, city or village, a quantity of land not exceeding one fourth of an acre and the dwelling house thereon. Such homestead cannot exceed twenty-five hundred dollars in value.

Interest.

The legal rate of interest is ten per cent., but parties may stipulate for any rate. There is no usury law.

Insolvency.

There are no statutes concerning insolvency or assignment.

Statute of Limitations.

Action on a judgment debt must be begun within six years; also on any written contract that does not pertain to realty; for waste or trespass to realty, or taking or injuring personalty or for its recovery, or for relief on the ground of fraud, two years; upon any unwritten contract, or an account for goods, wares or merchandise sold and delivered, three years. A new promise written and signed, or a part payment of principal or interest will revive a barred debt.

Wills.

Every person of sound mind and eighteen years of age, married or single, may make a valid will of real and personal property.

Two subscribing witnesses are required to all written wills, except olographs, which are valid. Witnesses must give their residence with their names.

A nuncupative will may be valid to bequeath property to the amount of one thousand dollars, if proved by two witnesses who were present at the making thereof, one of whom was asked by the testator to bear witness that such was his will, or words to that effect; and if reduced to writing within thirty days, and offered for probate within six months of the time when spoken. Such a will can be made only by soldiers or seamen in actual service, and in actual fear, peril or contemplation of death; or by one who is at the time in expectation of immediate death from an injury received the same day.

A will is revoked by the subsequent marriage of the testator, and birth of a child, if the widow or child survives him, unless provided for by the will or some settlement, or unless so mentioned in the will as to show an intention not to make such provision. A woman's will is revoked by her subsequent marriage.

The marriage of an executrix or administratrix terminates her authority. A married woman may be appointed executrix, but she cannot be appointed administratrix.

Descent and Distribution of Property.

The rules governing the descent and distribution of property are identical with those of California.

Curtesy and Dower.

There is no curtesy or dower. In lieu thereof, the surviving husband or wife takes one half absolutely of the estate of the deceased, if there are no children; one third if there are children. The entire community property belongs to the husband, on death of the wife, without administration, unless some part thereof has been set apart by judicial decree for the support of the wife, which part she may dispose of by will; or in lack of a will, her heirs inherit it exclusive of her husband. On the death of the husband, half the community property goes to the wife, and the other half by his will or to his heirs.

Divorce.

Causes for divorce are as follows: Impotency; bigamy; adultery; wilful desertion without reasonable cause, for one year; habitual drunkenness for one year; extreme cruelty; conviction of felony or other infamous crime; and in favor of a wife, if her husband has wilfully deserted and absented himself from her and departed from the territory without the intention of returning.

The plaintiff must have resided in the territory one year, unless the

offense was committed there, or while one or both parties resided there. The court may make such order as it sees fit concerning alimony and the custody of children. Any woman who is poor and unable to pay the expenses of suit may be allowed to prosecute it without costs.

Married Women.

All property owned by a woman before marriage, or acquired afterward in any way, and the use, increase and profits thereof, is her own, free from her husband's debts, unless contracted for necessities for herself and her children under eighteen years of age. To be thus secured to her, however, it must be recorded with the registrar of deeds in the county where she resides.

A married woman may become a sole trader by making a written declaration of her intention to do so, setting forth the nature of her intended business, acknowledging it and recording it with the county registrar of deeds. If she invests more than ten thousand dollars in the business, her declaration must contain a statement under oath that the surplus above ten thousand dollars did not come from any funds belonging to her husband. The husband is not responsible for any of her business debts unless he guarantees them in writing. A married woman who is sole trader is responsible for the support of her children.

Miscellaneous.

Age of Majority.—Men are of age at twenty-one, women at eighteen, but a valid will may be made by a person of either sex at eighteen.

Testimony.—A husband or wife cannot be examined for or against the other, or as to any communication by one to the other during marriage, without the other's consent. Communications made to clergymen, physicians and lawyers are also privileged and need not be disclosed, unless by the consent of the party interested.

Mechanics' Liens.—Mechanics, laborers and all others who contribute to the construction or repair of any kind of property, have a lien thereon for their demand. An original contractor must file his account with a description of the property, with the county recorder within ninety days from the date of the last item; any sub-contractor must file a copy of his settlement with the contractor, etc., within thirty days.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment for life. The abduction of any woman against her will, and compelling her by force, threats, menace or duress to be married or to yield herself to any man, is a crime punishable by imprisonment.

Intoxicating Liquors.—The license fee for selling spirituous or malt liquors in less quantities than one quart, is sixty dollars per quarter in any place of three hundred population or more; between one hundred and three hundred, forty dollars per quarter; between forty and one hundred, twenty-five dollars; and no license to sell at all can be obtained on a less fee than fifteen dollars per quarter. There is also a scale of fees for those doing business as keepers of restaurants, lodging-houses or hotels. It is forbidden to sell adulterated liquor, or to sell liquor to Indians or half-breeds, or to soldiers, or to minors, or near camp-meetings, or to allow any minor to be present in any place where liquor-selling or gambling is practiced.

NEBRASKA.

Collection of Debts.

Arrest.—A debtor may be arrested if the debt was fraudulently incurred, or if he is about to remove or dispose of his property with a view to defraud his creditors.

Attachment.—The property of a defendant may be attached in the cases given above, also when he is about to abscond or leave the state, or conceal himself or his property, or when he is a foreign corporation or a non-resident.

Garnishment.—Any person or corporation holding property or money of another may be summoned on a garnishee process to answer to a suit by a creditor of the latter.

Exemptions.—Exempted to any resident of the state who is head of a family is the following personal property: Clothing of debtor and family; provisions and fuel for the family for six months; supplies for domestic animals for three months; family Bible, pictures, and books; pew in church and burial lot; beds, bedding and bedsteads necessary for family; stoves and appendages not exceeding four; other household furniture not over one hundred dollars in value; one cow, three hogs and all pigs under six months, and if debtor be engaged in agriculture, one yoke of oxen or horses; ten sheep and their wool, raw or manufactured; one wagon or cart, two plows and farming implements not over fifty dollars in value; tools, etc., of mechanic or miner or person in any trade or business; and library and implements of any professional man.

Also to every family, a *Homestead*, whether owned by husband or wife, not exceeding two thousand dollars in value, the land not exceeding one hundred and sixty acres, or if in city or village, a quantity of contiguous land not exceeding two lots. Or if the debtor, head of a family, has no homestead, he may exempt five hundred dollars' worth of personalty, in lieu thereof.

Also sixty days' wages are exempt from any process of attachment or garnishment, to any laborer, mechanic or clerk who is head of a family, unless he is about to abscond or leave the state.

No property is exempt from any claim made upon it by any clerk, laborer or mechanic for wages owing him by its owner.

The phrase "head of a family" as here used includes besides a husband, every person who has residing with him or her and in his or her care a minor child, stepchild, sister, brother, orphaned niece or nephew, a parent or grandparent whether by blood or marriage, an unmarried sister, or any of the relatives named who have reached majority but are unable to support themselves.

Interest.

The legal rate of interest is seven per cent., but the parties may contract for a rate as high as ten per cent. Above this is usurious, and penalty is the forfeiture of all interest and the payment of costs of the action, unless the contract is negotiable paper which has come into the hands of an innocent holder before maturity of the paper.

Insolvency.

A voluntary assignment of all real and personal property, not exempt,

may be made by an insolvent debtor for the benefit of his creditors, in accordance with the requirements of the statute regulating the matter. An assignment is void if it gives a preference among creditors, except for labor or wages not exceeding one hundred dollars to any person; or if it tends to coerce the creditors in any way.

Statute of Limitations.

Actions for the recovery of the possession, or the title to, realty (this rule applies to mortgages), and actions upon the official bonds of executors, administrators, etc., must be brought within ten years; actions on oral contracts, or for the taking or injuring personal property, or for trespass to realty, or relief on the ground of fraud, four years; on written contracts, or foreign judgments, five years; libel and slander, assault and battery, one year.

If the plaintiff is under any legal disability, or if defendant is absent or concealed, the statute does not run. Part payment of the barred debt, or a new promise in writing to pay it, renews the obligation.

Wills.

Any man of sound mind and twenty-one years old, and any woman of eighteen, married or single, may make a valid will of property, real and personal. The statute says that "any person of full age" may make valid written will, and another statute says that if a woman marries between the ages of sixteen and eighteen, her minority ends; so it is possible that a married woman over sixteen might make a will.

Two subscribing witnesses are required to all written wills.

Nuncupative wills, to bequeath more than one hundred and fifty dollars, must be proved by at least three witnesses who were present, and the testator must have bidden the persons present or some of them to bear witness that such was his will, or words to that effect. Any soldier or sailor in actual service may make such a will of his wages and personal property; also any person in his last sickness, at the place of his or her habitation or dwelling, or where he or she had resided for ten days next before, unless unexpectedly taken sick and dying elsewhere. Unless the will is reduced to writing within six days after being spoken, it cannot be offered for proof more than six months after.

Any written will, inclosed in a sealed wrapper properly indorsed, may be deposited with the probate judge in the county where the testator lives, who shall safely keep it, and deliver it only to the testator himself or on his written and witnessed order during his lifetime; or after his death, the probate judge shall open it himself after giving notice to the executor or persons interested.

The marriage of an executrix or administratrix terminates her authority.

Claims against the estate of a deceased person must be presented within such time as the court may fix, not less than six nor more than eighteen months from the granting of letters testamentary or of execution.

Descent and Distribution of Property.

The real property of an intestate descends as follows: In equal shares to children, the children of any deceased child taking his share; if none, the whole to the widow for her life, and after her death, to intestate's father; if no widow, to father direct; if no father, to mother, brothers and sisters equally, children of any deceased taking his share; if no brother

or sister, all to mother, to exclusion of children of deceased brothers or sisters; if no mother, to next of kin; if none, to the widow in fee; if no widow, to the state.

Estates by curtesy and dower are first satisfied out of any real estate.

Personal property of an intestate is distributed, after payment of debts, etc., in the same way as realty, except that the widow, if any, takes a child's share therein.

Illegitimate children are heirs of their mother, and of their father if he acknowledges them in writing. A child's inheritance is reduced by advancements in life time of intestate. Kindred of half blood inherit equally with those of whole blood unless the estate came to the intestate from an ancestor of different blood.

Curtsey and Dower.

Common law curtesy and dower prevail. If the husband is divorced for his adultery, misconduct, drunkenness or imprisonment, the wife may immediately take her dower in his realty; so also if the marriage is dissolved by his imprisonment for life.

Divorce.

Causes of divorce are as follows: Adultery; wilful abandonment without just cause for two years; habitual drunkenness; impotency; sentence to imprisonment for three years or more; extreme cruelty; also in favor of wife, when husband, being of sufficient ability, wantonly and cruelly refuses or neglects to support her.

Plaintiff must have resided in the state six months before beginning suit, unless the marriage was solemnized in the state and plaintiff has resided here since that time. The court may grant alimony and custody of children. Neither party can marry again within six months after decree, within which time proceedings may be had for reversing, vacating or modifying the decree.

Married Women.

A wife's separate property free from husband's debts or control, consists of all property of whatever kind possessed by her at marriage, or acquired afterward, except by gift from her husband. She may sue and be sued, may convey her real estate, and may make all contracts in reference to her property, as a married man may do; but her contracts must be in relation to, and for the benefit of, herself or her estate. She may carry on business on her own account, and her profits or earnings are her own. Neither husband nor wife is liable for the other's ante-nuptial debts. Husband and wife cannot convey lands directly to each other.

Miscellaneous.

Age of Majority.—Women are of age at eighteen, or by marriage at sixteen.

Women.—Women who have resided forty days in the district, and who own and are taxed for real or personal property, or who have children of school age residing in the district, may vote at school meetings.

Testimony.—Neither husband nor wife can in any case be a witness against the other except in a criminal action brought by one against the other; but they may in all criminal actions be witnesses for each other. Neither can be examined as to any communication made by one to the other while married. No practicing lawyer, physician or clergyman can disclose any confidential communications made to him professionally, unless by the consent of the party interested.

Mechanics' Liens.—Mechanics, contractors and material-men may have a lien for their money if a contract was made with the owner of the property, with reference to its improvement, removal, etc. An account in writing of the items must be filed in the office of the county clerk within four months after labor or materials furnished, and the lien will then be good for two years. It is assignable.

Age of Consent.—The "age of consent" is twelve years. The punishment for criminal knowledge of any child below that age, or for rape, is imprisonment from three to twenty years. Seduction under promise of marriage, of any woman of good repute for chastity, below the age of eighteen years is punishable by imprisonment; but no conviction can be had on the uncorroborated testimony of the injured party. So also is any enticing, decoying, hiring or compelling of any woman under eighteen years of age to yield herself to any person other than the abductor; or to cause any woman over that age so to do against her will, by compulsion or otherwise.

Intoxicating Liquors.—The county board of each county may, if it be deemed expedient, grant a license for the sale of intoxicating liquors, upon the petition of thirty of the resident owners of real estate in the precinct. The tax is not less than five hundred dollars for each license, and a bond for five thousand dollars must be given with sufficient sureties. The corporate authorities of all cities and villages may license, restrain, regulate or prohibit liquor selling. If a license is granted, the tax is not less than five hundred dollars in places of not more than ten thousand population, or one thousand dollars in larger places. But special permits may be granted to druggists for the sale of liquors for medical and mechanical purposes. For selling without a license, a fine of one hundred dollars to five hundred dollars for each offense may be imposed. It is forbidden to sell to minors, Indians, habitual drunkards, or insane or idiotic persons; or to sell adulterated liquors; or to sell on Sundays or election days; or to obstruct a view of the interior of any saloon, etc., by screens, blinds, paint, etc.; or to "treat" or accept a treat, or to sell or give liquor away within three miles of any place in any field or woodland where any religious society is gathered for worship, unless at the regular place of business of such seller. The licensed seller of liquors shall pay all damages that the community or individuals may sustain in consequence of such traffic; and shall support all paupers, widows and orphans, and pay the expenses of all civil and criminal prosecutions growing out of, or justly attributable to his traffic.

NEVADA.

Collection of Debts.

Arrest.—A debtor may be arrested when guilty of fraud in contracting the debt, or of a fraudulent intent not to pay it.

Attachment.—An attachment may issue when the action is upon a contract for the direct payment of money payable in this state, which is not satisfactorily secured by any mortgage, lien or pledge on property in the state; or an action of contract against a non-resident plaintiff.

Garnishment.—There is a garnishee process for recovering debts out of property or money of the debtor in the hands of another.

Exemptions.—Exempt, except on a judgment for the purchase money, or on a mortgage thereon, is the following property: Chairs, tables, desks and books to value of one hundred dollars; wearing apparel, beds, bedding and bedsteads, necessary household furniture; provisions and firewood for one month; to a farmer, his necessary implements; and seed grain or vegetables for planting within six months, to value of two hundred dollars; two horses, oxen or mules, and their harnesses, two cows, one cart or wagon, and food for animals for one month; necessary tools of a mechanic; necessary library and implements and horse and vehicle of a professional man; to a miner, his cabin not exceeding five hundred dollars, and mining apparatus, etc. to same value, and two working animals, their harness and fodder for one month, when they are necessary to his work; to a teamster or other laborer who habitually earns his living thereby, two working animals, one cart and fodder for one month; sewing machine in use to value of one hundred and fifty dollars; all arms, etc., required by law to be kept.

Also a *Homestead* to the value of five thousand dollars. If a homestead is properly recorded, it cannot be conveyed or otherwise alienated without the consent of both husband and wife, written, acknowledged and recorded.

Interest.

The legal rate of interest is ten per cent., but parties may agree in writing for any other rate.

Insolvency.

An insolvent debtor who has resided at least one year just preceding in the county, and who owes more than five hundred dollars, may make an application to be discharged from all his debts and liabilities by making over all his property, not exempt, for the benefit of all his creditors. Or an application may be made by five or more creditors whose demands accrued in this state, and which aggregate to not less than five hundred dollars, petitioning that a debtor be declared insolvent, if he is about to leave the state with intent to defraud his creditors, or being absent, remains away or conceals himself with that intent, or has given preference to one or more creditors, and in some other cases. Partners or corporations may be declared insolvent. If a debtor who has already been once discharged, applies a second time, he shall not be entitled to another discharge unless the property surrendered by him amounts to at least fifty per cent. of his liabilities, unless three fourths of his creditors in number and amount, consent thereto.

Statute of Limitations.

Actions for the recovery of real property must be brought within five years after dispossession, except in the case of mining claims, which must be begun within two years. Actions on judgment debts and written contracts given or made in the state, six years; on an open account for goods, wares and merchandise sold and delivered, or for any article charged in a store account, or on any unwritten contract, four years; for trespass to realty, taking or injuring personalty or for its recovery, or for relief on the ground of fraud three years; for slander, libel, assault, battery, or false imprisonment, two years.

To renew a barred obligation, a new promise must be in writing and signed.

Wills.

Any person of sound mind and eighteen years of age, of either sex, married or single, may make a valid will of all his or her realty and personalty. By the husband's written consent, annexed to the will, a wife may also dispose of her interest in the common property.

Two subscribing witnesses are required to all written wills, which must be signed and sealed by the testator. Nuncupative wills made in the last sickness of the deceased are good to dispose of personalty to the value of one thousand dollars, and must be proved by two witnesses who were present at the making, when the testator bade some one present to bear witness that such was his will, or words to that effect. It must be proved within three months after being spoken, the words or the substance thereof having been committed to writing by the probate judge.

A woman's will is revoked by her subsequent marriage. A man's will is likewise revoked by his marriage if his widow survives him and is unprovided for in the will, and no mention therein made of her, indicating an intention not to make such provision.

The marriage of any executrix or administratrix terminates her authority. But a married woman may be appointed executrix or administratrix.

Claims against the estate of a deceased person must be presented within ten months after the date of publication of notice to creditors, except where the value of the estate does not exceed five hundred dollars.

Descent and Distribution of Property.

The real and personal estate of an intestate, after payment of debts, descends as follows: If intestate leaves one child or its descendants and a husband or wife, such survivor and the child inherit equally; if more than one child, or one and children of others, the widow or widower takes one third and the residue goes equally to children, the children of any deceased child taking his share; if no child or descendants, equally to widow or widower and intestate's father; if no widow or widower survives, all to father; if no father, equally to mother, brothers and sisters, children of any deceased taking his or her share; if no brothers or sisters, all to mother; to the exclusion of children of any deceased brother or sister; if no children or descendants, no parent, brother or sister, but a surviving widow or widower, such survivor takes all; if no such survivor, it goes to the next of kin; if no kindred, to the state.

Upon the death of a wife, the entire community property belongs at once and without administration to the husband, unless he has abandoned

her without cause, when one half, subject to debts, may be disposed of by her will, or if she leaves no will, it goes to her descendants. Upon the husband's death, without a will or children, the entire community property belongs to the wife in the same way, but subject to his debts, charges of administration, and the family allowance; unless the parties have been separated without such cause as would have given her a divorce, in which case she takes no part of the community property.

The homestead and other property exempted from sale by law, shall be set apart for the use of the widow and minor children.

Curtsey and Dower.

There is no curtesy or dower.

Divorce.

Causes for divorce are as follows: Impotency; adultery; wilful desertion for one year; conviction of infamous crime; habit of gross drunkenness contracted since marriage and incapacitating the party from contributing his or her share to the support of the family; extreme cruelty; neglect of husband for one year to provide common necessities of life, when not caused by his poverty, and which could be avoided by ordinary industry.

Plaintiff must have resided in the state and county six months; or the county must be one in which the parties last cohabited, and in which the plaintiff resides; or in which the defendant resides or is found; or in which the cause of action took place.

The community property shall be equally divided between the parties, except that when cause is adultery or extreme cruelty, the guilty party shall only receive such portion as the court may allow.

Married Women.

In Nevada, all property owned or claimed by a married woman at marriage or acquired afterward by gift, descent, bequest or devise, and the rents, issues and profits thereof, is her separate property. All property thus owned or acquired by the husband is his separate property. All property acquired by either after marriage in any other way than by gift, descent, bequest or devise, is the common property of both, subject to the entire control of the husband, who may dispose of it as of his own separate estate, during the existence of the marriage. The wife's separate property must be inventoried and recorded according to the statutory requirements. She may sell or convey her separate property as if unmarried, and may make contracts in her own name and give notes concerning such property. It is liable for her debts, contracted before or after marriage. She may carry on any trade or business by application to the court to be declared a sole trader; and she is then liable for the maintenance of her children. She must support her husband out of her separate property when he has none and they have no community property, and he from infirmity, is unable or incompetent to support himself. Except concerning her separate business or trade, she cannot sue or be sued alone, unless she is living apart from her husband. She may make a will of all her separate property as if unmarried. She may make all contracts concerning her property and convey her realty, without her husband's consent, and they may contract with each other. If she lives apart from her husband, the earnings of herself and her minor children are hers absolutely.

Miscellaneous.

Age of Majority:—The age of majority is twenty-one for men and eighteen for women. Minors may legally marry at the age of eighteen for men and sixteen for women, but not without the consent of their fathers, mothers or guardians under the respective ages of twenty-one and eighteen.

Marriage:—Parties nearer of kin than second cousins cannot marry.

Women:—Any male person over eighteen years of age who wilfully strikes, beats or tortures any woman over sixteen years of age, shall be lashed to a post or pillar in some public locality, with a placard on his breast inscribed "Woman beater," or "Wife beater," as the case may be, and made to stand there from two to ten hours.

Mechanics' Liens:—Mechanics and others who perform labor or furnish material, for the construction or repair of any building to the amount of five dollars, shall have a lien thereon. So also laborers upon any railroad, toll road, canal, mine, etc. The claim for a lien must be filed with the county recorder, within sixty days in case of a contractor, within thirty days in case of a sub-contractor or laborer, and it is good for six months. Persons cutting wood or timber may have a lien, but it is only good for sixty days. Claims for wages due for labor done within ninety days, to the amount of two hundred dollars, are made preferred claims against the property of any debtor taken in execution.

Age of Consent:—The "age of consent" is twelve years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment for a term not less than five years, and which may extend to life. It is a crime punishable by imprisonment to take any woman unlawfully, against her will, and by force, menace or duress, compel her to marry or to yield herself to any person.

Intoxicating Liquors:—The license fee is forty dollars per quarter payable to the state, besides a municipal fee. It is forbidden to sell intoxicating liquor without a license; or to sell adulterated liquor; or to sell to minors or Indians, or at a camp-meeting, or to "treat."

NEW HAMPSHIRE.

Collection of Debts.

Arrest.—A debtor may be arrested when the debt exceeds thirteen dollars and thirty-three cents, if a proper affidavit be made by the creditor or his agent, that the defendant is justly indebted to him in a sum above that amount, and has concealed his property, or is about to leave the state to avoid the payment of his debts. But no woman, sheriff, or voter on election days can be arrested upon any civil process.

Attachment.—Most actions are commenced by an attachment of the defendant's property. All property not exempted may be attached. The claim sued for must be due, else the attachment is not valid.

Garnishment or Trustee Process.—There is a trustee process by which a creditor may recover his debt out of property or money of the debtor's in the hands of another. The earnings of the defendant's wife and minor children cannot be trustee, nor the defendant's own earnings after service of writ. If the claim against the defendant is not for necessities furnished him or his family, twenty dollars of his earnings before service of the writ are also exempt.

Exemptions.—Exempted from attachment and from liability to be taken on execution, are the following articles: Necessary clothing, beds, bedsteads and bedding, for debtor and his family; cooking stove and furniture thereof; one sewing machine; other household furniture to value of one hundred dollars; Bibles and school books in use; library to value of two hundred dollars; provisions and fuel to value of fifty dollars; one cow, hog, pig and pork of same; six sheep and their fleeces; domestic fowl to the value of fifty dollars; four tons of hay; tools of his occupation to value of one hundred dollars; a yoke of oxen or a horse; uniform, arms, etc., of militia-man; pew and burial lot.

Also a *Homestead* to value of five hundred dollars, in favor of wife, widow or minor children of the owner. A homestead to the same value is exempt in favor of any unmarried owner; and if a married woman dies leaving a homestead, the husband has life interest in it, not exceeding five hundred dollars. But this homestead right may be waived by deed of husband and wife, and it is not valid against a claim or note or mortgage of husband and wife, or against a claim for labor of less than one hundred dollars, or against a lien by the seller of the estate for its price, or a debt contracted for the erection of the buildings or for taxes.

Interest.

Legal interest is six per cent. Above this rate is usurious, the penalty for which is a forfeiture of three times the excess above the legal rate. Usury does not make a contract void.

Insolvency.

An assignment for the benefit of creditors must include all the debtor's property, not exempt, and must be for the benefit of all creditors. Wages due to operatives, clerks, house-servants, and other laborers, to an amount not exceeding fifty dollars for labor performed within six months next previous, must be paid in full by the assignee; all other creditors receive a dividend in proportion to their claims. If the estate pays seventy per cent. of all claims proved, the debtor may be discharged

from all debts against him at the date of the assignment; if it pays less, he may be discharged upon the written consent of three fourths in number of his creditors who own three fourths in amount of the debts against him. No debt contracted prior to August 28, 1885, is affected by said discharge unless it is proved in the proceedings. A debtor who has once received his discharge in proceedings of this kind is not entitled to a second discharge under like subsequent proceedings. The law also provides for a composition by the debtor with his creditors. One or more creditors having claims against a debtor amounting to three hundred dollars or more, may compel an assignment by him with the results above stated, if they can satisfy the probate court that he is insolvent.

Statute of Limitations.

Actions for the recovery of realty, upon notes secured by mortgage, and upon judgments, recognizances, and contracts under seal, must be brought within twenty years from the time when the right of recovery accrues; for trespass to person and defamatory words, within two years; all other personal actions, six years. Those under legal disability, have five years as to real actions, and two years as to personal actions, after the removal of the disability. Absence of the defendant from the state is also excluded from the computation of time. A debt is revived by any new promise, oral or written, and is then as binding as before it was barred by the statute.

Wills.

Any person, of sound mind and twenty-one years of age, of either sex, married or single, may make a valid will of realty and personalty.

A will must be signed and sealed by the testator, or some one for him at his express request and in his presence, and three subscribing witnesses are required.

Nuncupative wills, bequeathing property, over one hundred dollars in value, may be declared by a soldier or sailor in active service; or in the testator's last sickness, and at his usual dwelling, unless he is taken sick and dies away from home. It must be declared in the presence of three witnesses, all of whom were requested by the testator to bear witness thereto, and a memorandum of the wishes of the testator must be reduced to writing within six days after its declaration, and presented for probate within six months.

Every child born after the decease of the testator, and every child or issue of a child of the deceased not named or referred to in his will, shall be entitled to the same portion—minus advancements already received by him—which he would have received if there were no will.

The marriage of an executrix or administratrix terminates her powers.

A will may be inclosed in a sealed wrapper by the testator, properly indorsed with his name, residence, date, and name of the person to whom it is to be delivered, and deposited in the registry of probate in the county where the testator lives; to be safely kept until delivered to him on demand, or to another in his lifetime on his written order which must be proved on oath by a subscribing witness; or after his death to the party named in the indorsement, or else opened publicly by the judge at the first session of the probate court.

Claims against the estate of a deceased person must be presented within three years of the appointment of an executor or administrator, unless the estate is insolvent, when they must be presented within the time (from six to nine months) fixed by the judge.

Descent and Distribution of Property.

The real estate of an intestate, subject to dower or curtesy and homestead rights, descends as follows: To children in equal shares, children of any deceased child taking his share. If none, to the intestate's father. If no father, equally to mother, brothers and sisters, children of any deceased taking his share. If none, to next of kin. There is no distinction between heirs of the whole and of the half blood.

Personal property of an intestate descends in the same way as real estate, after first giving to the widow the share prescribed by law, paying debts and charges of administration.

If a widow is not mentioned in her husband's will, or if she waives the provision therein made for her, a reasonable allowance may be made out of the personal estate for her present support; and the whole of such estate, or such part thereof as the judge may deem reasonable shall be given her as her distributive share. Either husband or wife, surviving the other, if not mentioned in the will of deceased, or waiving the provision made in such will, may take one third part of all the personalty after payment of debts and administration charges, when there is a child or children; but if no children, then one half of such property.

Legitimate and illegitimate children share equally in the estate of their mother. The estate of an illegitimate child dying without issue or a will, goes to his mother and her heirs.

Curtesy and Dower.

Common law curtesy prevails. But when the deceased wife leaves a child of the marriage surviving, or the issue of such a child, the husband may release his title to the curtesy, and take instead one third absolutely of all her real estate; if she leaves no children or issue thereof, one half absolutely; but if she leaves any other child, not his, or the issue of such child, and he has no right of curtesy, he can take only one third for his life. And if he has wilfully abandoned her or neglected to support her, or in consequence of his own neglect shall not have been heard from for three years next preceding her death, he can take no part of her property, real or personal.

Common law dower also prevails, except that the right attaches only to cultivated land. The dower must consist of so much real estate as will produce a yearly income equal to one third of the yearly income of the whole at the time of her husband's death. Or if she prefer, she may release her dower and homestead and waive any provision made for her by his will, taking instead one third absolutely of all the realty which he owned at death, after payment of debts and charges, when there is a child of the marriage surviving or the issue of such child; or one half, where he leaves no child or issue thereof.

Divorce.

Causes of divorce are as follows: Impotency; adultery; extreme cruelty; conviction of crime punishable in this state with imprisonment for more than a year; and actual imprisonment under such conviction; treatment seriously injuring health, or endangering reason; absence unheard of for three years; habitual drunkenness for three consecutive years; joining any religious sect that believes the relation of husband and wife unlawful, and refusal to cohabit for six consecutive months; wilful absence of husband from wife for three consecutive years, without providing for her; wilful absence of wife from husband for three consecutive years,

without his consent or due cause; absence of wife out of the state for ten years without husband's consent and without claiming marital rights; when wife of any alien or citizen of another state, living separate, has resided in this state for three consecutive years, the husband having left the United States intending to become a citizen of another country, and not having during that period come into this state and claimed his marital rights, and not having provided for wife's support.

No divorce will be granted for any cause unless it is in existence at time of filing the petition, except for adultery. Jurisdiction in divorce cases is given when both parties were domiciled in the state when the action commenced; or when the plaintiff was so domiciled and the defendant was personally served with process within the state; or when one of the parties was so domiciled and actually resided in the state one year next preceding the action.

Married Women.

A married woman holds as her separate property all which she owned at marriage, or acquired afterward in any way, and she may sell or dispose of it by conveyance or by will as if unmarried. Her earnings are her own. She is not liable for her husband's debts, but she is for her own, and her wages, income and personal property may be attached by trustee process or otherwise for them. She can make all contracts in her own name, transact business, engage in trade, and bind herself by promissory notes, except that she cannot bind herself or her property for or in behalf of her husband, as surety, guaranty or in any other way. She may sue and be sued alone; may make her husband her agent, and may make contracts with him, on which she may maintain an action at law against him. It has also been held that she may bring an action of trover against him for the conversion of her property. But he cannot have an action against her and he cannot convey away his improved real estate so as to bar her rights of dower and homestead without her consent; nor can he convey real estate directly to her. He is not liable for her antenuptial debts, but is liable, as at common law, for her debts for necessities after marriage.

She may make a will of property held by her as her sole and separate property, but she cannot thereby deprive him of his right of curtesy, or to a distributive share in her estate.

If her husband has deserted her for three months, or is insane or spendthrift, or has joined a religious society that ignores marriage, she may apply to the judge of probate in the county wherein she resides, and he will order provision for her and her children, from any property of the husband in the state; and her own property acquired in any way, her earnings and those of her minor children will be exclusively hers until the couple live together again, and if they never do, she has the same rights, and her property descends in the same way as if she were single.

Miscellaneous.

Aliens.—Aliens have the same property rights as citizens, if they reside in the state.

Women.—Women may vote for school committee, and may hold school offices.

Guardians.—The marriage of a woman who is a guardian does not extinguish the guardianship, but it may be revoked by the judge in his discretion. A married woman may be appointed guardian.

Testimony.—Husband and wife are competent witnesses for or against each other in all cases, except when it clearly appears to the court that the examination of either would lead to a violation of marital confidence.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of any child below that age, or for rape, is imprisonment not exceeding thirty years. Willfully and deceitfully enticing or carrying away any female child under the age of eighteen years, with the intent or for the purpose of prostitution, is punishable by fine or imprisonment.

Intoxicating Liquors.—The sale of intoxicating liquors is prohibited except for medicinal, mechanical, chemical and sacramental purposes. The selectmen of each town may decide by vote whether any appointment of agents for the sale of spirituous liquors in the town shall be made. If the vote is affirmative, they may appoint one or more such agents, not exceeding three, who may make sales for the purposes named and no other. They receive their supplies of liquor from one or more suitable persons who are appointed by the Governor from time to time, for the purpose of making such supplies of pure, unadulterated liquors. Agents are forbidden to buy of any other than the persons thus appointed, and forbidden to adulterate their liquors. Any person who in buying liquor from agents, makes false statements as to the purpose for which he wants it, is punishable by fine. The agents are forbidden to make any profit from their sales, receiving compensation from the town for their services, and they are bound to obey the rules prescribed by the selectmen and to render to them accounts of all purchases and sales. Selling without due authority may be punished by fine and imprisonment. Selectmen are required to prosecute all who violate the provisions of law on the subject. The husband, wife, guardian, employer, or any near relative of a person who habitually drinks to excess may furnish a written notice to any person not to furnish liquor to such person; and if the notice be disobeyed, may recover from fifty dollars to five hundred dollars damages. Importers may sell foreign liquors in the original casks and packages.

NEW JERSEY.

Collection of Debts.

Arrest.—Arrest may be had for debt only upon affidavit of the creditor that the defendant is about to remove his property with intent to defraud creditors, or that he fraudulently conceals property; or has assigned, removed or disposed of property with fraudulent intent, or is about to do so; or that he fraudulently contracted the debt. Or he may be arrested on execution if he has property to the amount of fifty dollars, not exempt, which he fraudulently refuses to apply in payment of the judgment.

Attachment.—A writ of attachment on the debtor's property may issue if he is absconding or a non-resident.

Garnishment.—There is a garnishee process by which a creditor may recover a debt due him, out of money or property of the debtor in the hands of another.

Exemptions.—Exempted from seizure on any civil process except for their purchase money, are goods and chattels to value of two hundred dollars, and all wearing apparel, the property of any debtor having a family residing in this state. Also the lot and building occupied and owned by the debtor, if he is head of a family, to value of one thousand dollars, by conforming to the provisions of the homestead exemption act.

Interest.

Legal interest is six per cent. Above this rate is usurious, the penalty for which is forfeiture of all interest, and costs of suit.

Insolvency.

A voluntary assignment of all his property for the equal benefit of all his creditors, may be made by any insolvent debtor. All preferences of one creditor over another are fraudulent and void, except in the case of mortgage and judgment creditors, where there is no fraud, and except also the wages of clerks, minors, mechanics and laborers due at the time, to the amount of three hundred dollars to each person; and the landlord's claim for one year's rent. Such creditors as come in and prove their claims can have no further action against the debtor, unless in case of fraud; but the debtor is not discharged from his liability to any creditors who choose not to exhibit their claims.

In the case of a debtor who has a family, goods to the amount of two hundred dollars are reserved from the assignment.

Statute of Limitations.

Actions for recovery of the possession of land, and on judgments, must be brought within twenty years; on contracts under seal for the payment of money only, and actions for rent on a lease under seal, sixteen years; for trespass to land, injuring or taking away personal property, or on contracts not under seal, six years; for trespass to the person, four years; for slander, two years. Debts that have been barred by the statute may be revived by a new promise in writing or a part payment. The statute is suspended during non-residence of defendant unless plaintiff is also non-resident and the cause of action accrued out of the state.

Wills.

Any person of sound mind and twenty-one years of age, of either sex, married or single, may make a valid will.

All written wills must be signed by the testator's own hand (though his mark may be sufficient) and two subscribing witnesses are required.

A nuncupative will, to bequeath more than the value of eighty dollars, must be proved by three witnesses who were present, and who, or some of whom were bade by the testator to act as witnesses; and it must be made by a soldier or sailor in actual service, or by one in his or her last sickness, and in the house of his or her habitation, or residence for ten days or more, unless surprised away from home by sudden sickness and death. The will must be committed to writing within six days after being spoken, else it cannot be proved after six months have passed.

Marriage and birth of a child not provided for or mentioned in the will, revokes a will previously made.

The marriage of a woman who is executrix, administratrix, guardian or trustee, revokes her powers, unless she and her husband give satisfactory bonds, when the power continues in the names of both.

Claims against the estate of a deceased person must be presented within nine months after public notice to creditors given by the executor or administrator.

Descent and Distribution of Property.

The real estate of an intestate descends as follows: To children equally, descendants of any deceased child taking his share; if none, to brothers and sisters of the whole blood equally, descendants of any deceased taking his share; if none, to father (unless the land came from the mother's side by gift, descent or devise, when it would go to the mother or her heirs); if no father, the property goes to the mother for her life, and at her death, to the next heirs; if no parent, to brothers and sisters of the half blood equally, descendants of any deceased taking his share—unless the property came by gift, descent or devise, when those not of the blood of the one from whom it thus came cannot inherit it. If no such relations, to next of kin.

The personal property of an intestate is distributed as follows: If there is a widow and children or their descendants, she takes one third, and the residue is equally divided among the children; if no children, widow takes half, and residue goes to next of kin; if no widow, all to children and their descendants; if no widow or children, to next of kin.

Curtesy and Dower.

Common law curtesy and dower prevail.

Divorce.

Causes for divorce from the bonds of matrimony are: Adultery; bigamy; consanguinity or affinity within the prescribed degrees; or desertion for three years. From bed and board for extreme cruelty.

One or both parties must have been resident in the state at the time when the cause accrued; or the marriage must have taken place in the state, and plaintiff have been resident at time of the cause and at time of filing the bill; or adultery must have been committed in the state, and one or both parties resident here at time of filing the bill; or one or other party must have resided here through the three years of desertion, one or other party being also resident here at the time of filing bill.

Married Women.

The real and personal property held by a woman at marriage, or acquired afterward, and the rents, issues and profits thereof, constitute the separate property of a wife, free from her husband's disposal or debts. Since January 1, 1875, a married woman may make binding contracts for her own benefit or that of her estate, except that she cannot bind herself as an accommodation indorser, guarantor or surety; nor by a promise to answer for the debt, default or liability of another; nor can she convey or mortgage her lands without her husband's joinder therein, unless she is living apart from him by a decree of court, when she may convey her lands alone and have all the property and contractual rights of an unmarried woman.

A wife's separate property is not liable for debts incurred by the husband, or by the wife as his agent, for the support of herself or the family, but it is liable if the debts are contracted by her for this purpose in her own name. She cannot contract with or sue her husband. She may make a will, but cannot deprive him of any interest which would otherwise become his on her death. If the husband dies leaving a family, his household goods to the value of two hundred dollars and real estate occupied by him at his death to the value of one thousand dollars are secured to his widow and children; and no waiver of this exemption is valid. Nor can such a homestead be sold or encumbered, unless other one thousand dollars are invested in other buildings for a homestead; and until this investment, the title of the purchaser is not good.

Miscellaneous.

Testimony.—A husband or wife is not a competent witness against the other in any criminal proceedings, but they may testify for or against each other in suits for divorce on the ground of adultery. Confidential communications between them cannot be given in evidence.

Mechanics' Liens.—Any person performing labor or furnishing materials for the erection or alteration of any building in the state, may have a lien thereon for his money. When it is erected by a contract, which is duly filed, the contractor only has a lien. A claim of lien must be filed in the clerk's office within one year from labor or materials furnished.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is a fine not exceeding one thousand dollars or imprisonment at hard labor not exceeding fifteen years, or both. The unlawful taking away of any unmarried girl under the age of fifteen years from the custody or possession and against the will of her parent or guardian, whether with or without the girl's consent, with the intention of seducing her, is punishable by fine or imprisonment or both, and if the intent be carried out, a severer sentence is imposed. The unlawful taking away of any woman against her will and causing her to be married or to yield herself to the abductor or any other, is similarly punished.

Intoxicating Liquors.—A low license law prevails. There is also local option by petition and special legislation. It is forbidden to sell adulterated liquors; or to sell in the court-house or jail, or on election-day, or to any disorderly person, or habitual drunkard, or minor student, or at a vendue, or from a wagon.

NEW MEXICO.

Collection of Debts.

Arrest:—A debtor may be arrested when about to abscond from the territory so as to endanger the collection of the debt against him; also when on execution, the sheriff finds no property of the defendant.

Attachment:—Any creditor whose claim amounts to fifty dollars, may have an attachment on the property of his debtor when he is a non-resident, or has concealed or absented himself; or has fraudulently concealed or disposed of his property or is about to do so, or to remove it, so as to hinder or defraud his creditors; when the debt was contracted out of the territory and he has fraudulently removed his property into the territory with intent to defraud his creditors; or when the debt was fraudulently contracted.

Garnishment:—Any personal property, money or debts in the hands of another, may be garnisheed.

Exemptions:—The following personal property is exempt in favor of any debtor who is the head of a family: Necessary clothing, beds and bedding for the family, and firewood sufficient for thirty days, and provisions to the amount of twenty-five dollars, when such provisions and fuel were already provided for the purpose; kitchen furniture to the value of ten dollars, all Bibles, hymn-books and school-books in use, and family and religious pictures; tools and implements necessary for the trade or business of the debtor, whether agricultural or mechanical, to the value of twenty dollars.

Also real estate on which the family is actually residing, to the value of one thousand dollars, provided the exemption be claimed.

Interest.

Any rate of interest below twelve per cent. is legal, that may be agreed upon by the parties; where none is expressed, the law allows six per cent. Above twelve per cent. is usurious, and the person from whom the illegal rate has been collected can recover from the person receiving it, double the amount collected; and usury is also a misdemeanor, punishable by a fine of from twenty-five to one hundred dollars.

Insolvency.

There is no statutory provision regulating assignments or insolvents.

Statute of Limitations.

Actions to recover possession of real estate must be brought within ten years. Those under disabilities are allowed three years after termination of the disability. Judgment debts are good for fifteen years; written contracts, sealed or unsealed, six years; actions on accounts and on unwritten contracts, for injuries to property, the taking of personal property, for relief on the ground of fraud, and all other actions not otherwise provided for, must be brought within four years; for injuries to the person or reputation, two years.

To all persons under legal disability, one year is allowed after the termination of such disability, within which to bring suit. To revive a debt that has been barred, a new promise or admission must be in writing.

Wills.

Any person, married or single, may make a valid will, with the following exceptions: Males not having completed fourteen years or females not having completed twelve; persons of unsound mind, a prodigal who has been prohibited from the free administration of his property by a court of competent jurisdiction; the deaf and dumb by birth, unless they can write it themselves.

Wills may be written or verbal, though the statute says it is better that they should be written. Written wills must be signed by the testator or some person for him, and witnessed by three or more able witnesses who are qualified to act as such in a court of law.

Verbal or nuncupative wills must be attested by three witnesses, and also by two or more others who shall testify as to the testator's soundness of mind. They must all be present, seeing and hearing the testator clearly and distinctly throughout the will.

All written wills are irrevocable unless specially referred to in a subsequent will as being revoked.

A testator who has no direct descendant, may constitute a stranger as his heir, on condition that it be not an infamous or stupid person; or married persons, in such case, may constitute each other, mutually, as heirs.

Parties capable of making a will may be appointed executors or administrators.

Claims against the estate of a deceased person must be brought within two years of the date of the death.

Descent of Property.

If the deceased was unmarried, such deductions are made from his estate as may be necessary to defray expenses and to pay legacies, and the balance is divided in common among the heirs, parents or grandparents coming first in order of kinship, then collateral relatives. If married, the private property of surviving husband or wife is first deducted; then the debts of deceased are paid out of the private property of the deceased, and the common debts of the marriage from the balance, which is called the "acquest" property, and which is then divided into two equal parts, one of which goes to the surviving husband or wife, and the other half to the heirs of the deceased; or if there are no children, such survivor takes all the acquet property. Also one-fourth of the private property of the deceased goes to surviving husband or wife, provided that this deduction shall only be made when said property amounts to five thousand dollars, and there be no descendants. After these deductions, the balance of property, private and acquet, is equally divided among descendants, if any; if none, among ascendants, or lacking these, among collaterals, males and females sharing alike in every case. Only for certain strictly specified causes, is a parent permitted to disinherit his descendants, or even a descendant permitted to disinherit an ascendant.

Curtsey and Dower.

Curtsey and dower are unknown. [See Descent of Property above.]

Divorce.

Divorces may be granted for adultery, abandonment, cruel and inhuman treatment, strict proof being required in every case.

Married Women.

The property relations of husband and wife are almost identically those of equal partners. All property owned by a woman at marriage, or acquired afterward by her industry or otherwise, is her separate property, free from her husband's debts. But he has the control of her property, and the proceeds thereof become their joint or "acquest" property.

Neither is liable for the debts or contracts of the other, entered into before or during marriage, except for necessities furnished after marriage to either, or to the family of both. But her property is not liable therefor when she acts as his agent in purchasing necessities. She is bound by her contracts, but her husband must join in her conveyances of her real estate. She is liable for her torts, but he is also liable for them.

Miscellaneous.

Age of Majority:—The age of majority for both sexes is twenty-one years. But wills may be made at the respective ages of fourteen and twelve, and marriages contracted at fifteen and eighteen with consent of parents or guardian, or at eighteen and twenty-one without. Majority is gained by marriage.

Mechanics' Liens:—One who furnishes labor or materials for the erection or repair of any building, has a lien upon it for his money, provided he files his account in the office of the county clerk within sixty days; or an original contractor within ninety days. Artisans and mechanics have also a lien on articles made or repaired by them.

Age of Consent:—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age is imprisonment for life; for rape, provided the woman be not a common prostitute, imprisonment from five to thirty years. The enticing away and seduction of any minor woman from the care of her parents, relations or guardians, is punishable by a small fine or short imprisonment.

Intoxicating Liquors:—Wholesale liquor license fees are one hundred dollars; retail, forty dollars; brewers', sixty dollars. It is forbidden to adulterate liquors; or to furnish liquor to minors, prisoners or Indians, and debts of minors for liquor cannot be collected.

NEW YORK.

Collection of Debts.

Arrest:—There is no imprisonment for debt, but the defendant in an action of contract may be arrested, when he has been guilty of fraud in contracting the debt, or has disposed of property or is about to dispose of property with intent to defraud his creditors. A woman can be arrested only when she is about to leave the state, or is a non-resident, or when a judgment has been given against her, requiring the performance of some act, neglect to perform which would be a contempt of court; or where the action is to recover damages for wilful injury to another's person, character or property.

Attachment:—Real and personal property of the defendant may be attached when he is a non-resident or a foreign corporation; or is fraudulently absent or concealed; or has fraudulently removed or concealed his property, or is about to do so, and in a few other cases.

Garnishment:—Property may be attached in the hands of third persons in the same cases when it may be in the hands of its owner.

Exemptions:—The following personal property is exempt when owned by a householder: Family Bible, pictures, school books in use, and library to value of fifty dollars; all spinning wheels, looms and stoves, and one sewing machine; pew in church and burial lot; ten sheep with fleeces, raw or manufactured; one cow, two swine, and necessary food for animals, and for family with fuel and lights, for sixty days; necessary tools and implements of a mechanic to value of twenty-five dollars. All necessary wearing apparel, beds and bedding, and cooking utensils; six each of plates, cups, saucers, knives, forks and spoons; six chairs, one table, one sugar dish, milk pot and teapot, and a few other small articles. There is also exempt, except for claims for the purchase money of exempted articles, or for domestic service, necessary household furniture, working tools and team, professional instruments, furniture and library, not exceeding two hundred and fifty dollars in value in the aggregate, with necessary food for team for ninety days.

To every householder having a family is exempt the *Homestead*, owned and occupied by him to the value of one thousand dollars, provided it is recorded as homestead property in the office of the county clerk where the property is situated. It is not exempt from taxes or assessments, debt for purchase money of the property itself, or for debt contracted prior to registration as homestead. The exemption continues after debtor's death, in favor of widow and children while any of them continue to occupy it, until death of widow and majority of youngest child.

The earnings of the debtor for his personal services within sixty days preceding the judgment against him, are exempt if they are necessary for the support of his family.

Married women are entitled to the same exemptions, real and personal, as other householders.

Interest.

The legal rate of interest is six per cent. Any rate above this is usurious, and one who has paid more, may recover the excess if he

brings action therefor within one year. Usurious contracts, etc., with some minor exceptions, are made void thereby, and usury is furthermore a misdemeanor.

Insolvency.

There are two methods of assignment open to debtors, known as insolvent assignments and general assignments.

The first is for the purpose of obtaining a discharge from debts, and is provided by statute, which requires that a petition therefor must be signed by the insolvent debtor and two thirds in amount in value of all his creditors in the United States. No preference is allowed among creditors, and the discharge will be void in case of fraud of the insolvent.

The second method is the common law right of a debtor to assign his property, regulated by statute. It does not discharge a debtor, but it contemplates the possibility of a composition among the creditors. Probably preferences among creditors may be made under this act. Wages and salaries due to employés must be preferred.

Statute of Limitations.

Actions to recover realty, or upon a judgment of a court of record, or upon any sealed instrument, must be brought within twenty years; actions for dower, twenty years from death of husband. Actions on an unsealed contract, express or implied, or for most injuries to the person or property, or to recover personal property, or to establish a will, etc., six years; slander, libel, assault and battery, false imprisonment, two years.

A new promise must be written and signed, to revive a barred debt; or a part payment will revive it.

Wills.

Any person of sound mind of twenty-one years of age, married or single, of either sex, may make a valid will of realty. Of personality, a man may make a will at eighteen years, and a woman at sixteen.

All wills must be written, nuncupative wills being good only when made by soldiers or seamen in actual service. Two subscribing witnesses are required, and besides writing their names, they should add their residences. The testator must declare in their presence that the instrument is his will, thus differing from the rule in many states, where it is only necessary for the testator to declare that the signature is his, without revealing the nature of the instrument.

The marriage of a woman revokes her will previously made. The marriage of a man revokes his will only if a child be born also, and if the wife or child is living at his death. If however, the will makes provision for the wife and children, or if it declares a distinct intention not to make any provision for them, it is not revoked by the marriage.

The law against perpetuities allows property to be tied up only during the continuance of two lives in being. (There is one exception to this rule not necessary to mention here.)

Benevolent, charitable, scientific, and missionary corporations organized under New York laws of 1848, Chap. 819, may hold property by virtue of a devise or bequest, the clear annual income of which devise or bequest does not exceed ten thousand dollars; but no person leaving a wife, child, or parent, can devise or bequeath to such corporation more than one fourth of his estate after payment of his debts, by any will not made and executed at least two months before his death.

Claims against the estate of a deceased person must be presented within six months after the executor or administrator has begun to advertise for claims; and such advertisement cannot be begun before six months after grant of letters testamentary or of administration. Disputed claims must be sued within six months after their rejection by the executor or administrator, or if not then due, within six months after becoming due.

Descent and Distribution of Property.

The real property of an intestate descends as follows: To children equally, descendants of any deceased child taking his share; if none, to intestate's father, or if dead, to mother; if neither, to his brothers and sisters, and their descendants; if none, to remoter kindred. If the estate came by inheritance from the family of intestate's mother, and if intestate leaves no children or their descendants, the mother takes a life estate in it and at her death it goes to intestate's brothers and sisters and descendants of any deceased, or if there be none, the mother takes it in fee. Half blood and whole blood inherit alike, unless the property came by gift, descent or devise from a relative on one side, when only those of that blood can inherit it.

Personal property of an intestate is distributed, after payment of debts, as follows: One third to the widow, and residue to children or descendants of any deceased. If no children or descendants, one half to widow and one half to next of kin. If no descendant, parent, brother, sister, nephew or niece, all to widow; but if there be a surviving brother or sister, nephew or niece, but no descendant or parent, the widow takes her one half, and all the residue, provided it does not exceed two thousand dollars; any surplus of such residue above two thousand dollars, is divided among the brothers and sisters and their descendants. If no widow, all goes to children and their descendants if any; if none, all to next of kin.

Personal estate of a married woman is distributed like that of a married man.

Curtesy and Dower.

The husband's right of curtesy attaches to all the realty which belongs to his wife at her death, unless she disposes of it otherwise by her will. The wife's right of dower attaches to all the husband's realty, and he cannot deprive her of it by his will.

Divorce.

Divorce from bonds of matrimony is only granted for the cause of adultery, and only then if both parties were residents of the state when the offense was committed; or were married in this state; or if plaintiff resided in this state when the offense was committed and when the action was begun; or if the offense was committed in this state and plaintiff resided here when action was begun. Plaintiff may marry again after divorce, but defendant cannot during plaintiff's life, unless court grants a modification of the decree after five years shall have elapsed, on ground of remarriage of the plaintiff and of uniformly good conduct of defendant.

Legal separations without divorce, are granted for inhuman treatment, abandonment, and neglect, and conduct rendering it unsafe and improper for the parties to live together.

Also a decree of nullity of a marriage may be given, making both

parties free, on application of either party who shows that at the time of the marriage there was lack of age of consent; a former husband or wife living; or the idiocy, lunacy or impotency of either party; or that the marriage was obtained by force, duress or fraud. The woman may obtain a decree of nullity by showing that she was under fourteen years of age at time of marriage, that her parent or guardian did not consent, and that the marriage was not followed by cohabitation, or by ratification of the marriage after she became fourteen.

Married Women.

All property, real and personal, possessed by a woman at marriage, and all acquired by her subsequently in any way, including the proceeds or earnings from any trade, business, labor or services carried on or performed by her on her sole or separate account, together with the rents, issues and profits of all such property, is her sole and separate estate, free from her husband's control or debts, except such debts as she, acting as his agent, may have contracted for the support of herself or her children. She may hold patents upon her inventions, and may vote by proxy or in person at any election for directors or trustees, in any company of which she is a stockholder or member. She may require any trustee who holds property for her benefit, to transfer such property directly to her own control; probably this would not be so, however, if the instrument creating the trust expressly forbade such a transfer. All contracts made between parties with a view to marriage—"marriage contracts," that is—are binding after the marriage takes place.

She may make all manner of contracts as if single, and her estate will be liable therefor whether they concern it or not. She may sell and convey her personality and realty, without her husband's consent or joiner. He is in no case bound by her contracts, unless she contracts as his agent.

She may sue and be sued as if single. She may be a guardian, executrix or administratrix, and may give the necessary bonds. She may make a will, or a power of attorney and may carry on any trade, business or profession, as if single; may employ agents, and bind herself in all respects as a man may do, the old common law protections being removed as well as the disabilities.

A wife who has a separate estate or business, may make special contracts with her husband, and engage him to do particular jobs of work, as if they were unmarried; but he cannot maintain an action against her to recover payment for such services. Nor can she sue him for damages for slander or assault and battery. But if he borrows money of her, or buys her property, or occupies her premises for his own business and validly agrees to pay rent, then, as well as in many other cases, he will be legally bound by his agreements and she may sue him on them. She may sue a firm in which her husband is a partner, to recover payment for her services or labor rendered them under an agreement by them to pay her therefor; but she cannot sue her husband alone for such services. The same doctrine does not seem to apply to the husband, for it has been held that he could not sue her on contracts made between them for his benefit. She can probably enter into a business partnership with her husband.

Miscellaneous.

Age of Majority:—The age of majority is twenty-one, but men at

eighteen and women at sixteen may make a valid will of their personal property.

Women.—Women may be attorneys at law and notaries public. Any woman may vote at school meetings, who owns or hires real property in any neighborhood or school district, and who resides therein; also any woman thus resident, who is the parent of a child or children, some one or more of whom shall have attended the district school for a period of at least eight weeks within one year preceding; or if not the parent, who has such a child permanently residing with her; or who being thus resident, owns any personal property assessed on the last preceding assessment-roll of the town, exceeding fifty dollars in value, exclusive of such as is exempt from execution.

Testimony.—A husband or wife shall not be compellable, or, without consent of the other, if living, allowed to disclose, a confidential communication made during the marriage. In actions on account of adultery, husband and wife are incompetent witnesses, except to prove the marriage. They are competent, and compellable witnesses for and against each other in civil actions, but not in criminal actions.

Mechanics' Liens.—Any person who, with the consent of the owner or contractor, furnishes labor or material in erecting, altering or repairing any building, may have a lien on it for the agreed price. Notice must be filed within ninety days after the conclusion of the work, and the lien will be good for a year.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of any child below that age, or for rape, is imprisonment for not less than ten years. Any unlawful taking of any woman against her will, with the intent to compel her by force, menace or duress, to marry or yield herself to the abductor or any other, is punishable by imprisonment not less than ten years. So also if the intent is carried into effect. Taking any girl under the age of fourteen years from her father, guardian or other person having legal charge of her, without their consent, for the purpose of marriage, concubinage or prostitution, is punishable by fine or imprisonment or both. Any inveigling, enticing or taking away of any unmarried woman of previous chaste character under the age of twenty-five years, for the purpose of prostitution, and all who assist or aid therein, is punishable by a short imprisonment; but the uncorroborated evidence of the woman is not sufficient for conviction. Seduction under promise of marriage, of any unmarried female of previous chaste character, is punishable by imprisonment in state prison not exceeding five years, or in county jail not exceeding one year; but the uncorroborated evidence of the woman is not sufficient for conviction. The unsupported evidence of the woman will not be sufficient for conviction in the above cases.

Intoxicating Liquors.—It would seem that there is some right of local option in the state, from the wording of the law of 1873, Chap. 549, § 6, which amends the license act as follows: "Nothing herein contained shall in any manner apply to any city or town where the majority of voters have voted for, or shall hereafter vote for local prohibition in accordance with any law providing for such voting, until such city or town shall reverse by vote such local prohibition;" but a somewhat careful search has failed to discover any further reference to this right. Licenses are granted by the board of commissioners of excise in each city, and incorporated town and village. In places of less than one hundred and

fifty thousand inhabitants, licenses can be given for the sale of spirituous liquors only to applicants of good moral character who keep an inn, tavern or hotel; and to store-keepers who may sell in quantities less than five gallons, but not to be drunk on the premises; and one place in each town may be licensed without the above restriction. The fee for a license is from thirty to one hundred and fifty dollars in towns and villages; from thirty to two hundred and fifty dollars in cities. Those selling in quantities not less than five gallons at a time, no part of which liquor is to be used on the premises, need no license. In cities of more than one hundred and fifty thousand population, licenses to retail liquor to be drunk on the premises may be granted to persons of good moral character, whether or not they keep an inn, tavern or hotel; and if an application for a license be made and rejected by the board, the applicant may apply to any court of record in the city, which may review the action of the board, and if convinced that the application was arbitrarily rejected, or rejected without good and valid reasons, the board may be ordered to grant the license. No sales can be made between the hours of one and five o'clock A. M. It is forbidden to sell to any Indian, or minor or apprentice without consent of his parent, guardian or master; and when the minor is under sixteen, and his parent or guardian has been designated by the overseers of the poor as an habitual drunkard, no sale can be made to such minor without the consent of the overseers of the poor. The sale is forbidden on polling places and parade grounds, in or near prisons, on Sundays or election days, or near religious meetings, to habitual drunkards, or paupers, or to any person against whom the seller has been notified by parent, guardian, husband or wife; and every such relative or any other person who is injured in person, property or means of support by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, has a right of action for damages against the person who gave or sold the liquor or caused the intoxication, in whole or in part; and against any person owning or renting or permitting the occupation of the building with knowledge that intoxicating liquors were to be sold therein; and the lease is also forfeited by such unlawful sale. It is also a misdemeanor to admit any minor, really or apparently under fourteen years of age, unaccompanied by parent or guardian, to any dance-house, concert-saloon, theater or other place of entertainment where liquors are sold or given away; or to allow such minor to remain in such place.

NORTH CAROLINA.

Collection of Debts.

Arrest.—A debtor may be arrested when about to leave the state, or when a non-resident, and in several cases of fraudulent intent. No female can be arrested in any action, except for a wilful injury to person, character or property.

Attachment.—An attachment may issue against the property of a defendant when the action is to recover a sum of money only; or to recover damages for breach of contract, conversion of personalty, or any other injury to personal property by negligence, fraud or other wrongful act; when the defendant is a foreign corporation or non-resident, or has departed or concealed himself to defraud creditors, or has removed, assigned or disposed of, or is about to remove, assign or dispose of his property with like fraudulent intent.

Garnishment.—Property of the debtor in the hands of another may be attached, and such person or any debtor of the debtor, may be summoned to appear and answer upon oath concerning the matter.

Exemptions.—Personal property of any resident of the state, to the value of five hundred dollars, to be selected by him is exempted.

Also a *Homestead* to the value of one thousand dollars, to be selected by the owner thereof; or instead, any lot in a city, town or village, with the dwelling and buildings, owned and occupied by the owner, to the same value; except for the purchase money, taxes, or mechanics' or laborers' liens.

Interest.

Legal rate of interest is six per cent. Eight per cent. may be stipulated for in writing. Higher rate is usurious, and penalty is forfeiture of entire interest; and party who has paid usurious interest may, by bringing suit within two years, recover double the amount of interest paid.

Insolvency.

Every insolvent debtor may present a petition to the superior court, praying that his estate may be assigned for the benefit of his creditors and that he may thereafter be exempted from arrest on account of previous judgments or debts. But he is not relieved from liability for the debts themselves thereby, but continues bound for the full amount. He may prefer creditors.

Statute of Limitations.

Adverse possession of land for twenty years gives title thereto, if no claim is instituted by the real owner; or if the possession be had under an apparently good title, seven years is enough. Parties under disabilities may have three years after removal of such disabilities. Judgments of any state or the United States are good for ten years; a justice's judgment, seven years. Actions on sealed instruments for foreclosure of a mortgage where mortgagor has been in possession, or redemption of a mortgage where mortgagee has been in possession, ten years; actions on unsealed contracts, for trespass to realty, for taking, injuring, or the recovery of personalty, three years; for libel, assault, battery or false imprisonment, one year, and slander, six months.

A barred debt can only be revived by a new promise written and signed.

Wills.

Any person of sound mind and twenty-one years, of either sex, married or single, may make a valid will.

Two witnesses are required, except to holographic wills, which are valid when properly proved.

Nuncupative wills may be made in testator's last sickness, in his own habitation or where he had been previously resident at least ten days, unless he died on a journey or from home. If the estate thus bequeathed exceeds two hundred dollars, it must be spoken in the presence of at least two credible witnesses who must state that they were specially required to bear witness thereto. Such a will cannot be proved after six months from the making unless it was put in writing within ten days from the making.

Wills made out of the state and conveying real property situated in the state must be executed according to the laws of this state.

The marriage of a man or woman revokes a will previously made.

Claims against the estate of a deceased person must be presented within twelve months from notice of administrator or executor.

Descent and Distribution of Property.

The real estate of an intestate descends as follows: To children equally, descendants of any deceased child taking his share. If none, it goes to the collateral relations who are of the blood of the first purchaser of the property; but if the property was purchased by the intestate himself, or if there are no survivors of the blood of the first purchaser who can inherit, the property goes to brothers, sisters or their children; or if none, to intestate's father, or if no father, to his mother. If no kin who can inherit as heir, to his widow.

Personal property of an intestate is distributed as follows: If there are only one or two children and a widow, she takes one third, and the residue is divided between the children or the descendants of a dead child. If more than two children, widow takes a child's part, sharing equally with them. If no child or descendants thereof, widow takes one half, and residue goes to next of kin. If no widow, all to children and descendants; if none, to next of kin.

Advancements by a father to a child, of realty or of personalty, must be accounted for, and subtracted from his share by inheritance.

Curtesy and Dower.

Common law curtesy and dower prevail.

Divorce.

Causes of divorce from bonds of matrimony are as follows: If either party shall separate from the other and live in adultery; adultery of the wife without such separation; impotence; pregnancy of the wife at marriage by another than the husband and without his knowledge.

Causes for divorce from bed and board are as follows: Desertion; maliciously turning the other out of doors; cruel treatment endangering life; intolerable indignities; or habitual drunkenness. With divorce from bed and board, alimony not exceeding one third of the annual income, may be granted.

Married Women.

All property of a wife, however acquired, and whether before or after

marriage, is her separate estate which she may dispose of by will as if unmarried, except as regards her husband's curtesy; but to convey it, she must have her husband's written consent. So also his written consent is necessary to enable her to bind her property by any contract, except for necessities for herself or family, or to pay her ante-nuptial debts, unless she is a free trader (which she may become by her husband's written and registered consent), when she may make all contracts regarding her separate business without his consent. Her husband is not liable for her debts. If her husband has abandoned her, she may bind her separate estate by her contracts.

Miscellaneous.

Mechanics' Liens.—Mechanics have a lien on every building built, repaired or improved by them, and on any article of personal property made, altered or repaired by them. The lien must be filed within twelve months, and action taken thereon within six months after filing.

Testimony.—Husband and wife may be compelled to give evidence in any civil suit to which either is a party, but not in a criminal action.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of any child below that age, or for rape, is death. For an assault on any female with intent to commit the crime, imprisonment from five to fifteen years. For abducting, or by any means inducing any child under the age of fourteen years, who resides with a parent, uncle, aunt, brother or elder sister, or at a school, or being an orphan resides with a guardian, to leave such person or school, the penalty is imprisonment not exceeding fifteen years. The seduction under promise of marriage, of any innocent and virtuous woman is a crime, punishable by fine or imprisonment at the discretion of the court, the imprisonment in the penitentiary not to exceed five years. The unsupported evidence of the woman is not sufficient to convict.

Intoxicating Liquors.—A local option law prevails by which, whenever prohibition is asked for a greater distance from a common center than two miles, the question must be decided by the qualified voters of the interested district at an election held for the purpose. The sale of liquors within one, one and a half or two miles of a great many churches, schools and other places in the state is forbidden by special legislative acts. Where licenses are allowed, the board of county commissioners is required to grant them to all proper persons who apply according to law. It is forbidden to adulterate liquors, or to sell on Sunday or election day, or to minors, or within two miles of political meetings, or one mile of divine service, or four miles of the university.

OHIO.

Collection of Debts.

Arrest.—A debtor may be arrested before or after judgment, if plaintiff files an affidavit setting forth that defendant contracted the debt fraudulently; or that he has removed, assigned or disposed of, or begun to remove, assign or dispose of any of his property, or has begun to convert it into money, for the purpose of defrauding his creditors, or that he fraudulently conceals property, or that the money or other valuable thing sought to be recovered, was lost at any game, or by a bet or wager. No woman can be arrested on any process for any debt or demand founded on contract.

Attachment.—An attachment may issue against a defendant's property in the cases named above as justifying arrest (excepting the last one), also when the defendant is a non-resident or a foreign corporation, or has absconded, or left the county, or concealed himself with intent to defraud creditors. The personal earnings of the defendant, if he be the head of a family, earned within three months preceding and to the amount of one hundred and fifty dollars, are exempt. Where there is danger that the defendant's property will be removed, the attachment may be made before the debt is due.

Garnishment.—There is a garnishment process by which a creditor may recover his debt out of any property or money of the debtor's held by a third person or corporation. The earnings of the head of a family are exempt as already stated.

Exemptions.—Exempted in favor of every person who has a family, and every widow, is the following property: Wearing apparel of such person or family, necessary beds, bedding and bedsteads, two stoves and fuel for sixty days; one cow, or if no cow, household furniture to value of thirty-five dollars; two swine and their pork, or furniture worth fifteen dollars; six sheep and wool and cloth therefrom, or furniture worth fifteen dollars; and food for animals for sixty days; family books, Bibles and pictures; other necessary furniture to value of fifty dollars; provisions actually provided to value of fifty dollars; one sewing-machine, one knitting-machine; tools and implements of trade or business to value of one hundred dollars; personal earnings of debtor or minor child for three months previous to attachment or judgment, when necessary for support of family. Also to drayman, head of family, one horse, harness and dray; to farmer one horse or yoke of cattle, necessary gear and wagon; to physician, one horse, saddle and bridle, and books, medicines and instruments to value of one hundred dollars.

An unmarried woman may hold exempt her wearing-apparel to value of one hundred dollars; sewing-machine and knitting-machine, Bible, and other books to value of twenty-five dollars.

To the head of a family is also exempt a *Homestead* to value of one thousand dollars; and if he is dead, realty to that value shall be set apart as a homestead, free from his debts, for the use of his widow and unmarried minor children, if deceased leaves a widow and one or more such children. If a resident debtor, head of a family, has no homestead, he may exempt in lieu thereof, any real or personal property to value of five hundred

dollars, besides that enumerated above as exempt. Such homestead exemption, or the personal property exempted in lieu thereof, is liable to claims for the purchase-money, mechanics' liens, taxes, and claims for manual work and labor less than one hundred dollars.

Interest.

The legal rate of interest is six per cent., but parties may stipulate in writing for eight per cent. There is no penalty for violation of this law, but if suit is brought to recover a debt on which usurious interest has been promised, only the debt and legal interest can be recovered.

Insolvency.

A voluntary assignment of his property for the benefit of creditors may be made by an insolvent debtor. All taxes, and wages not exceeding three hundred dollars, earned within twelve months preceding, are preferred claims. Preferences by the assignee in a general assignment are not allowed, but a creditor may be preferred before a general assignment is made. The assignment, and payment of a dividend does not discharge the debtor; the payments are only on account.

Statute of Limitations.

For recovery of title or possession of realty, action must be brought within twenty-one years. Action upon a written contract, sealed or unsealed, fifteen years; on an oral contract, six years; trespass to realty, for recovery of personalty, or for taking or injuring personal property, four years; libel, slander, assault and battery, one year. The statute does not run during any disability of plaintiff; or the absence of defendant from the state, or his concealment. A new promise, or acknowledgment must be in writing and signed; or a part payment will renew the obligation.

Wills.

Any man of sound mind and twenty-one years, may make a valid will; any woman, married or single, at eighteen.

Two subscribing witnesses are required to every written will.

A nuncupative will may be made in the last sickness of the testator, and it will pass his personal estate, if the declaration of his wishes is made before two competent, disinterested witnesses, who reduce it to writing and sign it within ten days after such declaration.

The marriage of a woman does not revoke a will previously made, but the birth of a child who is unprovided for, by the will or otherwise, and who is not mentioned in the will in such a way as to show an intention of disinheriting him, will revoke the will, previously made, of his mother or his father.

A homestead shall be set apart from the deceased husband's realty for the use of the widow or children, free from his debts.

If a testator dies leaving a child, by birth or adoption, or any descendant of such child, and the will gives any property to any benevolent, charitable, religious or public purpose, such will is invalid unless it was duly executed one year before the death of the testator.

Any written will may be inclosed in a sealed wrapper, properly indorsed, and deposited in the office of the judge of the probate court, by the testator or any person for him, to be safely kept until delivered to the testator himself or some person authorized by him, by an order in writing duly proved by the oath of a subscribing witness; or after his death, delivered to the person named in the indorsement on the wrapper; or if no

such person demands it, the will shall be publicly opened in the office of the probate court.

Descent and Distribution of Property.

The real property of any intestate which came to him by descent or devise or gift from any ancestor, descends as follows: To children equally, children of any deceased child taking his share. If none, to widow or widower for life, and at death of such survivor, to brothers and sisters of intestate of the blood of the ancestor from whom the estate came; if no widow or widower survives, estate goes at once to such brothers and sisters and descendants of any deceased. If none, estate goes to the ancestor from whom it first came to intestate, if living; or if dead, to his children, or to his brothers and sisters with a life estate in his widow (if a parent of the intestate.)

If the estate came to intestate in any other way than by gift, descent or devise, it descends to the children and their representatives; if none, to widow or widower; if no such survivor, to brothers and sisters of the whole blood and their representatives; if none, to those of half blood; if none, to father, or if he be dead, to mother; if dead, to next of kin.

Any husband or wife who dies intestate and without children, possessed of any real or personal property which came to such intestate from any former deceased wife or husband, by gift, or by devise or bequest, or which came to said former wife or husband otherwise than by gift, descent or devise from any ancestor of such former deceased husband or wife, then such estate shall go to the children of such former deceased wife or husband or their representatives, if any live; if not, it goes half to brothers and sisters of the former deceased wife or husband, and half to brothers and sisters of the intestate.

Personal property of an intestate goes to the widow, if there be no child; if there be a child, widow takes one half of any sum not exceeding four hundred dollars, and one third of the residue above that sum. If no widow, the personalty goes as the realty which came not by gift, descent or devise. There are also certain articles of personal property which must always be set aside from the estate of any deceased who leaves a widow, or minor child or children, including one family sewing-machine, all spinning-wheels, looms and stoves in use; family books to value of one hundred dollars, and pictures; one cow, or household goods to value of forty dollars; twelve sheep to value of seventy-five dollars, and their products, and all flax for use of family; all wearing apparel and ornaments of family and deceased, all beds, cooking utensils and table-ware necessary for family, a few other specified articles, and others to value of one hundred dollars. Also sufficient provisions or other property to support widow, and children under fifteen years, for twelve months. These articles, except the wearing apparel of the deceased, remain in possession of the widow so long as she lives with and provides for her minor child or children; when she ceases to do so, she can retain only her wearing apparel, ornaments, one bed and bedding, and the rest goes to the children. If there be no minor children, the articles all go to the widow.

Curtsey and Dower.

A surviving husband has curtesy in his deceased wife's realty, whether or not any child was born during the marriage; but if she leave a child, or descendants of any child, by a former marriage, the husband takes no curtesy in the property which goes to such child or children or represent-

atives thereof, unless the property came to her by gift from the surviving husband or by devise or gift from his ancestors.

Dower is given in all realty owned in possession by husband during marriage, or of which, at his death, he held a fee simple in reversion or remainder; also of all right, title or interest which at his death, he held by bond, article, lease, or other evidence of claim. Widow may remain in the mansion house of her husband, free of charge, for one year after his death, if dower be not sooner assigned.

Divorce.

Causes of divorce are as follows: Bigamy; adultery; impotency; wilful absence for three years; extreme cruelty; fraud in marriage contract; any gross neglect of duty for three years; habitual drunkenness for three years; sentence and imprisonment in penitentiary (if divorce is sought during such imprisonment); also the procurement of a divorce in another state by the opposite party, the effect of which is to free the party who procured it, and to leave the other party bound.

When divorce is for husband's fault, court must restore to wife her real estate which has not been already disposed of, her former name, reasonable alimony, and if she survives her husband, she may take dower as if no divorce had been granted. Also temporary alimony during the suit may be given a wife, and there may be a suit for alimony alone without divorce.

To obtain a divorce, the plaintiff in an action for divorce must have resided in the state one year, and action must be brought in the county where plaintiff has a *bona fide* residence, or that where the cause of action arose.

Married Women.

All property real and personal, acquired in any way, before or after marriage, together with the rents and profits thereof, constitutes the separate estate of a wife, free from the husband's control or debts. Her personal earnings and wages are her own. The mere fact that her personal property or her choses in action are in the care of the husband, or that he uses and enjoys them, does not have the effect of giving him a right to their possession.

She may, without her husband's consent, lease her realty for a term not exceeding three years; but she cannot lease it for a longer term, nor convey or mortgage it unless he joins in the act. She may make contracts to the same extent and in the same manner as if she were single. The husband is not liable for the wife's ante-nuptial debts, nor for her torts or contracts, except to the extent of any property which he may have received from her, by ante-nuptial contract or otherwise.

A married woman whose husband deserts her, or fails, from intemperance or other cause, to provide for his family, may make contracts in her own name for the labor of her minor children, and may sue for and collect their earnings; and upon application to the court, alleging and proving such desertion or neglect, she may be vested with the rights, privileges and liabilities of a head of the family, as to the care and custody of her minor children, and with the powers of a single woman as to disposing of her real estate, free from her husband's curtesy.

Miscellaneous.

Age of Majority.—Women are of legal age at eighteen.

Women.—Women may be attorneys-at-law.

Testimony.—Husband or wife cannot testify for or against each other, either during the continuance of the relation, or afterward, as to any private communication between them, or as to any act done by either during the marriage, unless some third person was present to their knowledge, at the time of the conversation or act. Nor can attorneys, physicians or clergymen testify as to any private communication made to them in their professional capacity, without the consent of the party who made it, unless such party voluntarily testifies himself, when his attorney or physician may also be compelled to do so.

Mechanics' Liens.—There are a variety of mechanics' and other liens.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age is imprisonment for life; for rape generally, imprisonment from three to twenty years. But to make such an abuse of a female child below the age of ten a crime, the assailant must be seventeen years of age. If he is below seventeen, or if an ineffectual attempt be made by one over seventeen to abuse a child below ten with her consent, it is not an indictable offense in Ohio. Further, the protection of female children below ten may be set aside entirely, if it be shown by a preponderance of evidence, that such a child did, in reality, understand the nature of the act to which she consented. It is a crime for any male person over twenty-one years who is teacher or tutor in any institution of learning or private tutor of any female, to have sexual intercourse with any female, with her consent, while she is under his instruction. Seduction under promise of marriage of any female under eighteen years of age, of good repute for chastity, by any male over eighteen, is punishable by a short imprisonment. So also is any inducing, decoying, permitting or compelling of any female under eighteen years, to yield herself to any person other than the accused himself, or causing any female over eighteen to do so against her will.

Intoxicating Liquors.—Upon the business of trafficking in intoxicating liquors, a yearly assessment is made of two hundred dollars; in malt or vinous liquors only, one hundred dollars. The phrase "trafficking in intoxicating liquors," is defined as "the buying or procuring and selling otherwise than upon prescriptions issued in good faith by reputable physicians in active practice or for exclusively known mechanical, pharmaceutical or sacramental purposes, but such phrase does not include the manufacturing of intoxicating liquors from the raw materials and sale thereof by the manufacturer in quantities of one gallon or more." Cities and villages have the power of regulating taverns and other places of public entertainment, and to regulate ale, beer, and porter houses and shops, but this power does not authorize them to prohibit the sale of liquors. It is unlawful to sell intoxicating liquors on Sunday except on prescription for medical purposes, but the council of any municipal corporation may regulate the sale of beer and native wine on Sunday. It is forbidden to sell to a minor except on the written order of his parent, guardian or family physician; or to a person intoxicated or in the habit of getting intoxicated; or near camp meetings or benevolent institutions, or to prisoner in jail, or on election day; or to adulterate liquors.

OREGON.

Collection of Debts.

Arrest.—There is no imprisonment for debt except in cases of fraud, or of absconding creditors. No female shall be arrested in any action except for an injury to person, property or character.

Attachment.—An attachment may issue on the property of a defendant in any action upon a contract for the direct payment of money not secured by a mortgage or lien; or in an action of contract against a non-resident.

Garnishment.—All choses in action are subject to garnishment.

Exemptions.—Exempted in favor of every debtor is the following property, provided that it is selected and reserved by him at time of the levy on his property, or as soon thereafter and before the sale, as the matter shall be known to him: Books, pictures and musical instruments to value of seventy-five dollars, and necessary clothing to value of one hundred dollars; and if debtor be a householder, clothing for each member of his family to value of fifty dollars; tools, implements, team, vehicle and harness, or library necessary for trade, business or profession, to value of four hundred dollars, and food for team (that is, one yoke of oxen, or one pair of horses or mules) for sixty days. Also to a householder,—if actually kept for the use of the family—ten sheep and one year's fleece, or yarn or cloth therefrom; two cows, five swine; household furniture, etc., to value of three hundred dollars; food for animals for three months and for family six months; church pew or seat; and certain fire arms to white male citizens over sixteen years of age. There is no exemption from a claim for the purchase money of any article.

Interest.

The legal rate of interest is eight per cent.; one may stipulate for ten per cent. Penalty for usury is forfeiture of entire sum, principal and interest.

Insolvency.

A general assignment of all his property for the benefit of all his creditors, may be made by any insolvent debtor, or one in contemplation of insolvency. If the assignment be made in good faith, and if the estate realizes at least fifty per cent. of all his debts, he may be discharged from his debts.

Statute of Limitations.

Actions for the recovery of realty, must be brought within ten years; actions on judgments and sealed contracts, within ten years; actions on other contracts, or for taking or injuring personal property, or trespass to real property, six years; libel and slander, assault and battery, two years. One year is allowed after removal of any disability. A new promise must be written and signed, to renew the obligation.

Wills.

Any person of sound mind, of either sex, married or single, may make a valid will of realty at twenty-one; of personalty at eighteen.

All wills, except those of soldiers and seamen in active service, must be written. Two subscribing witnesses are required. If any person

signs the testator's name, at his request, he must also sign his own name as a witness and state that he wrote the testator's name.

If any testator or testatrix marry and die without leaving some provision for the children of the marriage, if any, the will is revoked. Marriage alone revokes a woman's will.

Descent and Distribution of Property.

The real property of an intestate descends as follows: To children equally, descendants of any deceased taking his share. If none, all to intestate's wife; or if no wife, to his father; if neither, to mother, brothers and sisters equally, descendants of any deceased taking his share; if no brother or sister surviving, to mother, to the exclusion of nieces or nephews; or if no mother, to next of kin.

Personal property descends as follows: If intestate leaves a husband, he takes the whole. If a wife and children or their descendants, she takes one half; but if no children or descendants, she takes the whole.

Curtsey and Dower.

Common law dower and curtesy prevail, with this difference, that the husband's right to curtesy attaches to all his wife's realty, whether a child is born to them or not.

Divorce.

Causes of divorce are as follows: Impotency; adultery; conviction of felony; habitual gross drunkenness contracted before marriage, and continuing two years before suit; wilful desertion for three years; cruel and inhuman treatment; or personal indignities rendering life burdensome.

Plaintiff must have been resident of the state for one year prior to suit.

The party in whose favor decree is given shall, in all cases, be entitled to one-third of the other's realty in fee simple, besides a further decree for maintenance when necessary.

Married Women.

The property and pecuniary rights of a woman at marriage, or afterward acquired by gift, devise or inheritance, constitutes her separate property, free from her husband's debts, but liable for her own. It must be properly recorded in the county clerk's office.

She may transact business in her own name, sell and convey her realty, sue and be sued as if unmarried.

She can make contracts for the benefit of herself or her separate estate, and any express contract charged upon her separate estate will be binding upon it. Her husband must join in a conveyance of her realty. Either may sue the other to recover possession of his or her property of which the other may have taken possession or control. Contracts and conveyances between them are binding, and either may make the other attorney to dispose of property, or for other business. Since 1880 no civil disabilities remain on the wife which do not exist in regard to the husband, but she cannot hold office or vote. The rights and responsibilities of the mother as to the children are the same as those of the father; and the expenses of the family and the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

Miscellaneous.

Age of Majority.—Women are of age at eighteen or at marriage;

but probably cannot make a will of realty until twenty-one. Men reach majority at twenty-one, but a person of either sex may make a valid will of personalty at eighteen.

Women.—Women may be attorneys at law.

Marriage.—Marriages are valid when made by males of eighteen and females of fifteen, who are otherwise capable.

Mechanics' Liens.—Every person performing labor or furnishing material on any building, wharf, ditch or other structure, shall have a lien on the same, and on the land if it belong to the person who ordered the labor or materials. It is binding for six months after filing notice, or if credit be given, six months after expiration of credit.

Testimony.—Husband and wife cannot testify as to confidential communications made between them during marriage; nor can physicians, clergymen, or attorneys as to communications made to them in their professional relations; but if the party concerned offers himself as a witness, these other parties may then be also examined on the same subjects.

Age of Consent.—The "age of consent" is fourteen years. The punishment for criminal knowledge of any child below that age, or for rape, is imprisonment from three to twenty years. For assault with intent to commit the crime, from one to ten years. Seduction of any unmarried female of previous chaste character is a crime; as is also the taking away from her parent, guardian or other person having the legal charge of her person, without such party's consent, of any female under the age of sixteen, either for the purpose of marriage, concubinage or prostitution. An unmarried woman over twenty-one years of age may sue to recover damages for her own seduction.

Intoxicating Liquors.—The fee for a license to sell spirituous, malt or vinous liquors is three hundred dollars per year; for malt liquors only, two hundred. It is forbidden to sell on Sundays or election days; or to minors or habitual drunkards, or intoxicated persons. No license can be given for sale of any of the above liquors, unless a petition therefor be signed by an actual majority of the whole number of legal voters of the precinct, and by more than the whole number of names of legal voters of such precinct which may be signed to any remonstrance. The petition must be published for four weeks in a newspaper. It is a misdemeanor to allow any minor to loiter or remain in or about any place where intoxicating liquors are sold, or to engage in any game in such place for amusement or otherwise.

PENNSYLVANIA.

Collection of Debts.

Arrest.—There is no imprisonment for debt, except where a judgment has been obtained, and the defendant has removed or concealed his property with intent to defraud his creditors, or is about to do so, or the debt was fraudulently contracted. Defendants in actions of tort may be arrested. But no married woman can be arrested for any cause of action, whether of contract or tort, that accrued before her marriage.

Attachment.—The property of a debtor may be attached by any creditor for more than one hundred dollars, on the same grounds of fraudulent intent on which he may be arrested. The real and personal property of a non-resident of the state who is not at the time in the county, may be held by a process of foreign attachment, whether or not the debt amounts to one hundred dollars.

Garnishment.—Property or money in the hands of another may be attached by a creditor of the owner thereof, after judgment shall have been rendered in creditor's favor.

Exemptions.—Exempted from execution is real or personal property to the value of three hundred dollars; also all clothing of debtor and family, and Bibles and school books in use. All sewing-machines belonging to seamstresses are also exempt. The widow or children of any deceased may claim the same amount out of his estate, free from his debts.

There is no *Homestead* exemption.

No property is exempt from judgments to the amount of fifty dollars, obtained for wages for manual labor.

Non-residents are not entitled to any exemption.

Interest.

The legal interest is six per cent. Usurious interest cannot be collected by suit; and if paid, may be recovered back, if suit is brought within six months. Most savings banks are by special statute authorized to lend money at higher rates; but banking companies are prohibited from doing so. Negotiable paper taken *bona fide* in the usual course of business is not affected by the rate of discount allowed on it.

Insolvency.

The insolvent laws were framed principally for the purpose of releasing debtors from imprisonment, and are little resorted to now that imprisonment for debt is restricted to cases of fraudulent intent. The discharge given does not release the defendant from his debts.

An assignment may be made by a debtor of a part or all of his property in trust for his creditors, whether with or without their consent, but the debtor is not relieved from his debts by such an assignment.

Statute of Limitations.

Actions for the recovery of realty must be brought within twenty-one years, except by parties under legal disabilities, who are given thirty years. Judgment debts, mortgages, and sealed contracts, are good for twenty years, and they may be sued on after the expiration of this term, if positive proof can be given that the claims have never been paid. Contracts not under seal are good for six years; an action for trespass to the person must be brought within two years; for slander, one year.

A plain acknowledgment by the debtor that the debt is due will revive it after being barred by the statute, though no direct promise to pay be given.

Wills.

Any person of sound mind and twenty-one years, of either sex, married or single, may make a valid will of realty or personalty.

Two witnesses are essential, but they need not be subscribing witnesses, nor need the testator acknowledge the will before them, except in the case of a will making a gift to any charitable or religious society, which must be written at least one month before the testator's death, and signed by himself and by the witnesses; and except also a married woman's will, which must be executed in presence of two or more witnesses, neither of whom can be her husband. All wills, except nuncupative ones, must be in writing, and unless the testator is absolutely incapacitated by the extremity of last sickness, must be signed at the end by him, or by some person in his presence and at his request. Soldiers and sailors may make a nuncupative will of personal estate. Also any one in his last sickness, at his own dwelling, or elsewhere if taken sick and dying while traveling; but if the value bequeathed exceeds one hundred dollars, it must be proved that he requested the persons present, or some of them, to bear witness that such was his will.

A woman's will is revoked by her subsequent marriage, and is not revoked by the death of her husband. A man's will is revoked by his subsequent marriage, if his widow survives him, so far as to give her the portion she would take had he died intestate; so also his will is revoked in favor of any child born after it is made, who is not provided for in the will, so far as to give such child his natural share; or if he leave a widow and no known heirs or kindred, his will made before his marriage is absolutely revoked so as to give her all his property.

Either a surviving husband or wife may elect to take such share as the law gives him or her instead of the share named in the will of the deceased.

Descent and Distribution of Property.

Real estate of an intestate descends as follows: If there is a widow and children, she takes one third for life; if no children, one half for life; if no known heirs, all in fee. Widower takes his wife's land for life, whether children have been born or not. The residue of the estate goes to children equally, descendants of any deceased child taking his share. If none, to parents of intestate jointly for their lives, or to surviving parent for life, and after their death, or if there be no surviving parent, at intestate's death, property goes in fee, equally to brothers and sisters of the whole blood, descendants of any deceased taking his share. If none, the estate goes absolutely to the intestate's parents or surviving parent; but if neither survives, the property goes to brothers and sisters or their descendants, of the half blood; or if none, to surviving widow or widower absolutely; or if no such survivor, it goes to the next of kin generally. If there be kin of the blood of the last purchaser of the property, it must go to such kindred, to the exclusion of those of other blood.

Personal property is distributed as follows: If there is a widow and children, to the widow one third absolutely; if none, she takes one half. If there is a widower and children, they all share alike, he equally with the children; if no children, he takes all. If no children, widow or wid-

ower, the property goes in the same way as realty, but without distinction of blood.

On all property passing by the death of the owner, whether by will, descent or deed, to any person other than a parent, husband or wife, or lineal descendants born in wedlock, a collateral inheritance tax of five per cent. is imposed, and unless paid within one year from the death, interest at the rate of twelve per cent. per annum is added to it.

Curtsey and Dower.

Common law curtesy and dower prevail, except that dower is barred by the sale of husband's lands on execution for payment of his debts, and curtesy attaches whether any children have been born or not.

Divorce.

Causes of divorce from bonds of matrimony are as follows: Incapacity of procreation; bigamy; adultery; wilful desertion without reasonable cause, for two years; cruel treatment by husband endangering wife's life, or intolerable indignities, forcing her to leave his house and family; incestuous marriages; marriages obtained by force, fraud or coercion and not subsequently ratified; sentence to imprisonment exceeding two years for felony; cruel and barbarous treatment of husband by wife, rendering his condition intolerable or his life burdensome.

There is no provision for a division of property, except in case of divorce from bed and board, which may be given for barbarous treatment of wife by husband, with alimony not exceeding one third of his income.

Plaintiff must be a citizen of the state and resident here for one year. The cause need not have taken place in the state.

If both lived here during marriage, and the injured party leaves the state and gets a divorce elsewhere, such divorce is not valid in this state, even though the defendant had actual notice of the divorce proceedings. The injured party must seek redress here in order to obtain a divorce which will be valid here.

Both parties to a divorce are free to marry again, except that when the cause is adultery, the guilty party cannot marry the person who shared in the guilt. If a wife is the guilty party, and if after divorce she openly lives with the partner of her guilt, she cannot dispose of her realty, by deed or by will.

Married Women.

All property, real, personal or mixed, owned before marriage, or acquired afterward in any way, by a married woman, constitutes her separate estate, free from her husband's debts during her life, but liable for her own debts, including those contracted by her (not as his agent) for the support of the family; but in such case, the creditor must first have failed to recover his debt from the husband. Her property is also liable for any judgment which may be recovered against the husband for her torts. The husband is not liable for her ante-nuptial debts. She cannot sell, convey, mortgage or transfer, her property, real or personal, unless her husband joins in the act; though she may give it to her husband. She cannot make a binding contract, except for necessities or for a sewing-machine. Her earnings belong to her husband, unless she petitions to the court that they may be secured to herself. She may hold and transfer stock as if single, and may keep a bank account in her own name and draw money on her own check or receipt. But her promissory

or judgment note is not binding. She may sell, assign, transfer or satisfy a mortgage or judgment as if single, and may be a corporator or officer of any association incorporated for purposes of learning, benevolence, charity or religion. Property simply in her possession is presumed to be her husband's, and if claimed by his creditors, she must prove, in order to keep it, that she owned it at marriage, or that it came to her afterward by gift or descent, or was purchased with funds not furnished by her husband.

If she has no separate estate, but borrows money and puts it into trade or business, while living with her husband, the proceeds are protected from him and his heirs, but not from his creditors. If her husband deserts her, or from drunkenness or other substantial and wilful cause fails to provide for her, she may be declared by the court a *feme sole* trader, when all her property, real and personal, becomes subject to her independent control, and her husband loses all right therein, even that of curtesy. So also if he is declared a lunatic, but subject, in this case, to his rights under the intestate laws.

If the husband is solvent and free from debt, he may settle upon her a reasonable portion of his estate, giving it to her separate power and control. She may, in person or by attorney, execute such instruments and perform such acts as may be necessary by law to enable her to take a legacy or distributive share of the personal estate or of the proceeds of the real estate of a deceased person. She may give her money or personality to her husband, but not to a third person, unless her husband join in the transfer. Her husband cannot sell, convey or encumber her separate property without her consent, written and duly acknowledged; but they may unite in the transfer. Her real estate can be conveyed only by the joint deed of both, privily acknowledged by her. She may loan money to him and take security therefor.

Miscellaneous.

Women.—Women are eligible to any office of control or management under the school laws; and they may be attorneys at law.

Marriage.—No person shall be joined in marriage until a license shall have been obtained for that purpose from the clerk of the orphans' court of the county.

Guardians.—A father may by his will appoint a guardian for his children, who will be entitled to their personal custody in preference to the claim of the mother. A guardian appointed by will, may also be executor or administrator of the estate in which the ward is interested. If a father has, for one year before his death, wilfully neglected or refused to provide for his children, he cannot appoint a guardian by his will, the mother in such case, having, during his life and afterward, all rights, and being bound by all duties, reciprocally due between father and child. If the father has died without appointing a guardian, and if the mother leaves property to her children, she may by her will appoint for them; she may also do so when she has herself been appointed guardian by her husband's will.

Mechanics' Liens.—Debts contracted for labor or materials furnished in the erection, alteration or repair of any building, form a lien on it, and on the land. So of work done on iron works, mines, bridges, engines, etc. The lien must be filed within six months from the date of the last item.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is a fine not exceeding one thousand dollars and imprisonment by solitary confinement not exceeding fifteen years. The punishment for an assault with intent to commit the crime is the same, except that the imprisonment cannot exceed five years. The seduction of any female of good repute, under twenty-one years of age, under promise of marriage is a misdemeanor, punishable by a fine not exceeding five thousand dollars, and imprisonment not exceeding three years. There must be other evidence of the promise besides that given by the woman. Taking a girl under the age of sixteen years for the purpose of prostitution or sexual intercourse; or without the consent of her parent, guardian or other person having legal custody of her, for the purpose of marriage, is punishable by fine or imprisonment or both. It is also a misdemeanor to entice any child under the age of ten years from its parent or parents, but excepted from this rule is any person who, claiming to be the father of an illegitimate child, or to have any legal right to the possession of such child, takes it out of the possession of the mother, or other person having lawful charge thereof.

Intoxicating Liquors.—Several counties and towns have prohibition by special legislation. Licenses to retail intoxicating liquors cannot be fixed at a less sum than fifty dollars, except where no sales are made of less than a quart, when the fee cannot be less than twenty-five dollars. Hotels are classified according to the estimated yearly sales; amounting to ten thousand or more, the fee is seven hundred dollars; eight to ten thousand dollars, four hundred dollars, etc., down to four thousand dollars or less, for which the fee is fifty dollars. Druggists who do not sell as a beverage, and importers selling in original casks, etc., need no license. It is forbidden to sell on election-day or Sunday, or to minors or persons already visibly affected by intoxicating drinks; or to insane persons. Any member of the family or blood relation of an intemperate person, or any overseer of the poor or magistrate may give a distinct notice verbal or written to any person who sells intoxicating liquor, forbidding him to furnish it to such person; if the order is disobeyed within three months, it is a misdemeanor. Also any husband, wife, parent, child or guardian of such person, may give a written notice, and for disobedience thereof may have a civil action to recover damages, which may be from fifty dollars to five hundred dollars. Any person furnishing drinks to any other person in violation of any existing law, is civilly responsible for any injury to person or property in consequence of such drinking. Any proprietor or person in charge of any dance house, concert saloon, theater, or similar place of amusement where wines or spirituous liquors are sold or given away, or any place of entertainment injurious to health or morals, who admits or permits to remain therein any minor under the age of eighteen years, unaccompanied by his or her parent or guardian, is guilty of a misdemeanor.

RHODE ISLAND.

Collection of Debts.

Arrest.—There is no arrest for debt, except in cases of fraud and of absconding creditors. Arrest is allowed in actions of tort. No female shall be arrested in any civil action founded on contract.

Attachment.—In any civil action founded on contract, an attachment may issue against the property of the defendant, if the debt be then due.

Garnishment.—Personal property or money of a debtor in the hands of another may be attached by a creditor of the former.

Exemptions.—Exempted from attachment and execution is the following property: Necessary clothing of debtor and family; necessary working tools to value of two hundred dollars. To a householder, furniture and family stores to value of three hundred dollars; books in use in the family; one cow, and one and a half tons of hay; one hog, one pig and their pork; one pew and burial lot; arms and equipments of a militiaman; mariner's wages until after termination of the voyage in which they were earned; debts secured by bills of exchange or promissory notes; salary or wages to amount of ten dollars, except when the cause of action is for necessities; salary or wages of debtor's wife or minor children.

There are no *Homestead* laws.

Interest.

The legal rate of interest is six per cent., but parties may stipulate for any rate. No usury laws.

Insolvency.

An insolvent debtor may make a voluntary assignment of all his property not exempt, for the benefit of all his creditors; he may prefer debts due the United States and the state of Rhode Island, and wages of labor performed within six months to the amount of one hundred dollars to each person thus claiming, but no other preferences are allowed. The debtor is not discharged from his debts by proceedings in insolvency, unless the creditors voluntarily decide to give such discharge.

If an insolvent debtor attempts to make a conveyance preferring one or more of his creditors, other creditors holding not less than one fifth in amount of all his debts, may petition the supreme court to declare him insolvent.

Statute of Limitations.

Twenty years' uninterrupted adverse possession of land without objection by the rightful owner will give title thereto; action to recover must therefore be brought within that time. Sealed contracts are good for twenty years. Contracts not under seal, for six years. Actions also for the recovery of personal property, and arrearages of rent must be brought within six years; actions of trespass, four years, of slander, one. The common law rule as to revival of outlawed contracts prevails, by which any new promise, oral or written, or any part payment of the debt, is sufficient.

Wills.

Any person of sound mind, of either sex, married or single, may make a valid will of realty at twenty-one years of age; of personalty at eighteen.

Two subscribing witnesses are required. All wills must be written, except those of soldiers and sailors disposing of wages and personalty.

The marriage of a testator or testatrix revokes a will previously made; and the birth of a child subsequently to the making of a will by his father or mother, if no provision is made for him therein, revokes it so far as to give him such share as he would have had if the deceased had died intestate.

The marriage of a woman who is executrix or administratrix extinguishes her powers as such.

Descent and Distribution of Property.

Real estate of an intestate descends as follows, subject to dower and curtesy: To children equally, descendants of any deceased child taking his share; if none, to intestate's father; or if no father, to mother, brothers and sisters, descendants of any deceased taking his share. If none, to remoter kindred.

Personal estate of an intestate is distributed in the same way as real estate, unless there is a widow, who takes one third of the property where there are also children; one half where there are none.

Curtsey and Dower.

Common law curtesy and dower prevail.

Divorce.

A divorce or separate maintenance may be granted for any of the following causes: A marriage originally void or voidable for any legal reason; conviction of murder or arson; presumption of death, from absence or other reason; impotency; adultery; extreme cruelty; wilful desertion for five years, or for a shorter period, in discretion of the court; continued drunkenness; neglect or refusal of husband to provide necessities for wife's subsistence; other gross misbehavior and wickedness repugnant to and in violation of the marriage covenant.

The plaintiff must be a domiciled inhabitant of the state, and resident here one year. The court may, at its discretion, give to the wife alimony not exceeding one half the husband's personalty, and the use of one half his realty; and may make decrees as to the custody of children. The wife also has the use of her separate estate, free from her husband's control.

Married Women.

All real and personal property owned by a woman at marriage, or acquired thereafter by her own industry or in any other way, the rents, incomes and profits thereof, and the proceeds if sold, are secured to her sole and separate use, free from her husband's debts, either before or after his death; and if he dies first, it remains her sole and separate property.

If the wife gives a written notice to her debtor, lessee, or any incorporated company whose stock she holds, to pay the rents, incomes and profits of her property to herself, then such payment must be made, and her sole and separate receipt or discharge will be the only valid receipt or discharge therefor; but unless she gives such notice, the receipt or discharge of her husband will be sufficient. The husband cannot dispose of any such property unless by deed in which the wife joins, such deed being privily acknowledged by her.

Her property is liable for her ante-nuptial debts, and for such contracts as she may legally make while married; but not for the support of herself or children, whether the contract therefor be made by herself or husband.

Her contractual powers are strictly limited by the statute, which provides only that she may sell or convey, or make contracts respecting the sale or conveyance, of all her personal property, as if she were unmarried, *excepting* her household furniture, plate, jewels, stock or shares in the capital stock of any incorporated company, money on deposit in any savings bank or institution for savings, with the interest thereon, or debts secured by mortgage of her property; concerning these, and also her real property, she cannot contract, save by deed jointly with her husband. In the matter of deposits personally made in any savings bank, however, another statute provides that either a married woman or a minor may control, transfer or withdraw the money so deposited with the dividends or interest. In any deed of her property, executed jointly with her husband, she must be privily examined apart from her husband, on the question whether it be her free act and deed, before acknowledging it.

Concerning the contracts which she is authorized to make, she may sue and be sued alone; otherwise her husband must be joined.

No married woman living with her husband can be a free trader, nor bind herself by a promissory note.

A wife who has been unjustifiably deserted for six months, or unprovided for by her husband, he being of sufficient ability, may be invested by the court with the powers of a single woman. If her husband is insane, she may act as a free trader. Any woman coming into the state to reside without her husband, he having never lived with her therein, and so continuing for one year, may afterward, during her separate residence therein, transact business, make contracts, sue and be sued, and dispose of her property, as if unmarried, and may have the exclusive care, custody and guardianship of minor children residing with her. If he afterward come into the state, the effect upon her contracts, etc., is the same as if they were then first married. If it be necessary, a trustee may be appointed by the court to manage the separate estate of a wife.

Besides her statutory separate estate, a married woman may also have an equitable estate, regularly given to trustees for her use, in regard to which she can make contracts for the benefit of herself or the estate, when it is her intention to charge the estate with such contracts, unless the instrument by which the equitable estate was given her, restrained her from making contracts.

Miscellaneous.

Women:—The Governor annually appoints a board of seven competent women to act as an advisory board of visitors to the penal and correctional institutions of the state and to the state reform school.

Guardians:—Every person authorized by law to make a will, except married women, may appoint by his will a guardian for his children during their minority.

Testimony:—Husband and wife are competent witnesses in all civil causes, except petitions for divorce, but neither shall give testimony tending to criminate the other, nor shall either disclose any communication made by one to the other during the marriage.

Mechanics' Liens:—Any contractor for work or materials furnished to the building, repairing or improving of any real estate, at the request of the owner thereof, or one who has any interest therein, or the husband of such owner if the wife assents in writing, has a lien on such estate or interest for his claim. Persons who work at the request of such con-

tractor also have a lien, if they give the owner written notice of their claim within thirty days after commencing work. The lien must be filed with the town clerk, within four months after default of payment, if the contract is written; or six months after beginning work, if oral.

Age of Consent.—No "age of consent" is fixed. Rape is punishable by imprisonment for life or for any term not less than ten years. An assault with intent to commit rape, imprisonment one to twenty years. Seduction under promise of marriage, of any woman or female child, by a fine not exceeding five thousand dollars, or imprisonment not exceeding five years. Inveigling or enticing any woman or female child, before reputed virtuous, to a house of ill-fame, for the purpose of prostitution or lewdness, or knowing, aiding or abetting in concealing any such woman or child, is punished as for seduction.

Intoxicating Liquors.—The town councils of towns, and boards of aldermen of cities, may grant or refuse to grant licenses for the sale of intoxicating liquors. To manufacture, or to sell at wholesale and retail, the fee is from three hundred to five hundred dollars; at retail only, one hundred and fifty to three hundred dollars; at retail, but not to be drank on the premises, one hundred to two hundred and fifty dollars; malt liquors at retail, fifty to two hundred dollars. Providence and Pawtucket have local option by annual ballot of the legal voters. In the rest of the state, the authorities have the option vested in them. It is forbidden to sell to minors; or to sell impure or adulterated liquors; or to sell on Sundays except by registered pharmacists on physician's prescription. It is not unlawful to make or sell cider, or to make wine, or malt liquors for domestic use, or alcohol for exportation and sale out of the state. If any intoxicated person injures the person or property of another, the person who furnished him contrary to law with any part of the liquor which caused his intoxication, may have a civil action for damages. It is unlawful to allow a minor to loiter on the premises where liquor is sold. The husband, wife, parent, child or guardian of any person who has the habit of drinking to excess, may give a notice, written and signed, to any person requesting him not to sell or give liquor to such person having such habit; and if such a sale be made within twelve months, or if such person is permitted to loiter on the premises, an action for damages may be had; an employer who gives such notice, may also have an action if he is injured in person, business or property in consequence of the notice being disregarded. No legal action of any kind can be maintained for the value of any intoxicating liquor drank upon the premises of the seller. No license can be granted for the sale of such liquor in any building or place within four hundred feet of any public school.

SOUTH CAROLINA.

Collection of Debts.

Arrest.—Arrest for debt can be secured only in cases of fraud and absconding debtors. If the debtor is about to abscond, and the creditor had no knowledge at the time the debt was contracted of the debtor's intention to leave the state, the latter may be arrested even though the debt is not yet due.

No female shall be arrested in any civil action.

Attachment.—An attachment may issue against the property of the defendant in any action for the recovery of money or property, or for damages for injury to person or property, if the defendant is a foreign corporation or non-resident, or has absconded or concealed himself or property, or is about to do so, or has assigned or disposed of any of his property with intent to defraud creditors, or is about to do so. If any fraudulent intention of evading the debt can be shown, an attachment may issue, though the debt be not due.

Garnishment.—Property of the debtor in the possession of another may be attached by his creditor.

Exemptions.—Exempted from attachment and sale to the head of a family residing in the state (either husband or wife, but not *both*), is a *Homestead* not exceeding one thousand dollars in value, and its yearly products; also personal property to value of five hundred dollars. The homestead right cannot be waived or alienated, nor can the homestead be sold for any other purpose than the purchase of a new one. But no property is exempt from a claim for the purchase money thereof, or for improvements thereto. There are also certain exemptions to an insolvent, for which see *Insolvency*.

Interest.

The legal rate of interest is seven per cent. Up to ten per cent. may be stipulated for in writing. If attempt be made to sue on a contract stipulating for a higher rate than ten per cent. no interest at all can be recovered; and if a higher rate be actually paid for borrowed money, the borrower may sue the lender and recover double the sum so paid, or may charge double the sum so paid, against the lender, on the account.

Insolvency.

The insolvent laws are designed principally for the discharge of an insolvent debtor from arrest, by an assignment of his property for the benefit of his creditors. They do not provide for his discharge from his debts to all his creditors, but only to such of them as voluntarily come in, prove their claims and accept a dividend. To the debtor is exempted his necessary wearing apparel, bedding, working tools and arms for muster; also if the head of a family, his homestead to value of one thousand dollars, and personal property to five hundred dollars. A voluntary assignment may be made by any insolvent debtor of all his property for the benefit of all his creditors alike, no preferences being allowed.

Statute of Limitations.

Actions for the recovery of realty must be brought within ten years;

actions on judgments, and on sealed contracts (other than sealed notes and personal bonds for payment of money only, which are not secured by mortgage), twenty years; on unsealed contracts, and the sealed notes and bonds named above, six years; trespass to realty, taking or injuring personalty, etc., six years; libel, slander, assault and battery, two years. If either party to an action for the recovery of realty is an infant or insane, or imprisoned on a criminal charge for a term less than life, five years are given after the termination of the disability. In regard to personal actions, five years beyond the time limited is given to those disabled, but not more except for infancy and not beyond one year after infancy ceases.

Wills.

Any person of sound mind, of either sex, married or single, may make a valid will of realty, and any person above the age of discretion (fourteen for boys and twelve for girls), may make a will of personalty.

Three subscribing witnesses are required to all written wills. Nuncupative wills of personalty may be made by soldiers and sailors in actual service. Also by a testator in his last sickness, in the house or place wherein he dies; but to bequeath more than fifty dollars by such a will, it must be proved by the oaths of at least three witnesses, who were present at its making and bidden by the testator to bear witness thereto. Unless such a will be committed to writing within six days after its making, it cannot be proved after six months have elapsed; and if thus reduced to writing, it must be probated within twelve months.

The marriage of a testator revokes his will previously made, if he leaves a surviving widow or children, unless the will was expressly made in contemplation of marriage and providing for such future wife and children, if any.

A married woman may be executor or administrator of a will.

Claims against the estate of a deceased person must be presented within one year from the appointment of executor or administrator, unless the estate remains unsettled longer.

Descent and Distribution of Property.

Real and personal property of an intestate descends alike as follows: If there is a widow and child or children, she takes one third in fee (in lieu of her dower), and the residue goes to such child or children; descendants of any deceased child take his share. If a widow, and no children or descendants, but parent or brother or sister of whole blood, or descendant of any such, the wife takes one half in fee, and the other half goes to such relatives. But if none such survive, the widow takes two thirds in fee, and the residue goes to remoter kin. If no widow, the entire property goes as above described. If no kindred but a widow or widower, such survivor takes all. A married woman's estate is divided just as is a married man's.

Curtsey and Dower.

Curtsey is abolished. Dower must be waived if a widow accepts the share in her husband's property given her by the statute.

Divorce.

No divorce is allowed for any cause.

Married Women.

All property real and personal owned by a woman at marriage or acquired afterward in any way (except from her husband to the detriment

of his creditors), constitutes her separate estate, free from her husband's debts, but liable for her own, contracted before or after marriage, her husband being liable only for the necessary support of his wife. She may contract with regard to her separate estate, and may dispose of it by will or by deed, sale, gift or otherwise, and can sue and be sued concerning it, as if single. But she cannot be held liable for the support of the family, and her property is not bound by any contract of her husband, for that or for any other purpose, made without her consent.

Miscellaneous.

Mechanics' Liens.—Mechanics furnishing labor or materials to build-ings or vessels have a lien therefor. There are other liens, among them a lien in favor of the landlord of land leased for agricultural purposes, for his rent, to the extent of one third of all the crops raised on the land.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is death; or if the jury recommends to mercy, imprisonment at hard labor for life. Any unlawful taking or conveying of any unmarried female child below the age of sixteen, out of the possession and against the will of the parent of such child, or of any person that has the lawful charge of such child, is punishable by imprisonment or fine.

Intoxicating Liquors.—By written petition of such a number of the legal voters in any incorporated city, town or village as equals one third of the votes cast in the next preceding municipal election, an election on the question of license or no license shall be called in such place. Such an election can only take place biennially. It cannot take place at all in places where the sale of liquors is prohibited by statute, of which there are a large number. Such sales are also absolutely prohibited in country places not incorporated. License fee is two hundred dollars. A fine to the same amount is imposed for illegal selling, or imprisonment or both; one half the fine goes to the informer. It is forbidden to sell to any person of known intemperate habits, to any person when intoxicated, or minor, or insane person, or on Sunday. Druggists can only sell on the prescription of a regular physician, for a patient whom he is attending; to sell otherwise, they must have a regular license. Licenses must be exposed to public view, and saloons must also be open to view, without screens, curtains or other devices for concealing the business. Wives, parents or guardians may notify saloon-keepers not to sell to members of the family. The notification is good for three months.

TENNESSEE.

Collection of Debts.

Arrest.—There is no arrest for debt.

Attachment.—Property of a debtor, of whatever description, may be attached if he resides out of the state, or if he has removed or is about removing his property from the state, or himself from the county, or has concealed himself, or fraudulently disposed of his property or is about to do so; for any of these causes except simple non-residence, an attachment may be had, though the debt is not yet due.

Garnishment.—There is a garnishee process by which a creditor may recover his debt out of property or money of his debtor in the hands of a third person. Thirty dollars of wages due to a mechanic or laborer are exempt.

Exemptions.—Exempted to the head of a family is the following personal property: Two beds, bedding and necessary clothing for the same, and one additional for each three children in the family, to aggregate value of twenty-five dollars for all bedsteads; two cows and calves, or three if there are more than five in the family; one table, one bureau, one dozen chairs, and certain specified articles of table furniture, all to the value of forty dollars; certain other articles of household furniture; Bible and school books in use; spinning-wheel and loom; two working-animals, and ox-cart; horse and wagon to value of seventy-five dollars; fodder to value of twenty dollars; one thousand pounds pork, slaughtered or on foot, and six hundred pounds bacon; or if family contains more than six persons, then twelve hundred pounds pork or nine hundred pounds bacon; six cords wood or one hundred bushels coal; twenty-five stands of bees and their honey; fifty sheep and fleece; one sewing-machine (to head of family, or single woman who uses it for a livelihood); a certain amount of food of various kinds; to farmer or mechanic, certain tools and implements of trade, also to a mechanic who is head of a family, two hundred dollars' worth of lumber or material, or products of his labor; certain other minor exemptions.

Thirty dollars of wages due to any mechanic or laborer are exempt from seizure by any process, and wages not due cannot be garnished.

A *Homestead* to the value of one thousand dollars is exempt from sale under legal process during the life of the head of a family, and at his death, it is exempt for the benefit of the widow during the minority of the children occupying it; but it may be taken for taxes, or for its purchase-money or improvements thereon. The head of any family may select the real estate to be set apart and exempted as a homestead, whether living on it or not.

If a debtor absconds, leaving his family, all the above exemptions are reserved for use of the wife and children. If he dies, the personal exemptions are secured to the widow; or if no widow, to minor children under fifteen years of age.

Interest.

The legal rate of interest is six per cent. Any higher rate is usurious, and may be recovered back if paid,

Insolvency.

An insolvent debtor may assign his property, without preferences, for the benefit of creditors. The assignment must be voluntary; no proceedings can be taken by creditors to force an assignment.

Statute of Limitations.

Judgment-debts are good for ten years. Seven years' adverse possession of land gives title thereto, and actions for its recovery must be brought within that time. Actions upon bonds, notes, bills of exchange, accounts and contracts generally, must be brought within six years; for injury to real or personal property or conversion of personal property, three years; for slander, six months; for libel, malicious prosecution, injuries to the person, false imprisonment, criminal conversation, seduction and breach of promise, one year.

Three years' extra time is generally given to parties under disabilities, though there are some exceptions.

The common law rule prevails as to the renewing of an outlawed debt, any promise to pay or acknowledgment of the debt, or part payment thereof, being sufficient to revive it.

Wills.

Any person of sound mind and twenty-one years of age, married or single, of either sex, may make a valid will of land.

Two subscribing witnesses are required to a will which is formally executed; but olographic wills are good to devise land, if three credible witnesses swear to the handwriting of the testator, whose name must appear somewhere in the instrument, either signed at its close, or inserted elsewhere. A married woman's will must, however, be formally executed.

Wills of personalty need not be written, but if the property bequeathed exceeds two hundred and fifty dollars in value, such a will must be proved by two disinterested witnesses who heard the declaration, and who were specially requested by the testator to bear witness thereto. It must be made in the last sickness of the testator, at his own dwelling, or where he had been residing for at least ten days, unless surprised by fatal sickness away from home. It cannot be proved after the expiration of six months, unless it was put in writing within ten days after declaration.

A child born after a will is made by his parent, and not provided for either by the will or any settlement, and not expressly disinherited, takes the same portion of property that he would have done had there been no will.

Descent and Distribution of Property.

Real estate of an intestate descends as follows: To children equally, descendants of any deceased child taking latter's share. If none, to brothers and sisters and their descendants. If none, to parents or parent.

If property came to intestate by gift, devise or descent from a parent or ancestor of a parent, it goes to kindred of the blood of that ancestor, if intestate leaves no children.

If there are no kindred who can inherit the estate, it goes in fee to husband or wife of intestate.

An alien, even if resident in the United States, who would otherwise be entitled to any real estate or interest therein, cannot take it unless he has declared, or shall within one year after the intestate's death declare

his intention of becoming a citizen of this country; and then he cannot take it when there are kindred of the intestate of equal degree with the alien, who are citizens of the United States, they taking the whole to the exclusion of the alien.

The personal property of an intestate is distributed as follows: If there is a widow and no children or descendants thereof, she takes all; if a widow and children or descendants, they share equally; if no widow, to children; if no children or descendants, to father; if no father, to mother, brothers and sisters; etc.

Curtsey and Dower.

Common law curtesy and dower prevail.

Divorce.

Causes for divorce from bonds of matrimony are as follows: Impotency; bigamy; adultery; wilful desertion for two years; conviction of infamous crime; conviction of felony and sentence to imprisonment; attempt on other's life with malice; refusal of wife without reasonable cause, to remove with her husband to this state, and her wilful absence from him for two years; pregnancy of wife at marriage by another than her husband and without his knowledge; habitual drunkenness contracted after marriage.

Causes of divorce from bed and board or from bonds of matrimony, at discretion of the court; inhuman and cruel treatment of wife; intolerable indignities to her; abandonment of wife, or turning her out of doors and refusal or neglect to provide for her.

Any person may apply for divorce if he or she has resided in the state for two years.

Married Women.

The statutes of Tennessee give a married woman no separate estate, but she can have an equitable estate in property which is settled upon her to her sole and separate use before or after marriage. Property thus secured to her, cannot be taken for her husband's debts or contracts, or controlled by him, except so far as authorized by the terms of the instrument under which she received it. No property of hers, whether acquired before or after marriage and whether settled on her or not, is liable for her husband's ante-nuptial debts or contracts, and his interest by the curtesy in her realty cannot be attached for his debts during her life so as to eject her therefrom; but beyond this, all her general personal property, whether belonging to her at marriage, or afterward acquired, including the rents, issues and profits of her realty, becomes the property of the husband if he reduces it to possession, and is liable for all his debts as much as her own; but he is not responsible for her ante-nuptial debts, and her property owned by her at marriage or acquired afterward by devise or descent, is first liable to her ante-nuptial creditors before being liable to his creditors.

Generally speaking, a wife is under common law disability, without power to bind herself or property by contract; nor can she transact business in her own name. She may convey her realty if her husband joins in the deed, but she must be privily examined thereon. Concerning her separate equitable estate, she may contract, and sell, convey or dispose of it by will, unless the instrument by which such property was settled upon her contains words restraining her from so doing. It is not liable for her husband's debts unless the instrument by which she acquired it

authorizes it to be so liable, and not then without her written consent. It is not liable for the support or expenses of herself, children or family, although for absolute necessities, unless she expressly contracts that it shall be.

If a husband is judicially declared insane, the wife may contract, trade, sue and be sued as if single; and her property acquired in the meantime is free from his debts. So if he abandons her; but if they live together again, it becomes liable for his debts.

Miscellaneous.

Mechanics' Liens:—Any mechanic, machinist or other, who does any work or furnishes materials toward the building or repairing of any house, may have a lien thereon, if the work was done by special contract with the owner or his agent. Journeymen or other persons employed under such mechanic, machinist, etc., may have a lien if he notifies the owner of the property in writing, when he begins work or furnishes materials, of his intention to rely thereon. Landlords also have a lien on growing crops of tenants for rent of land and necessities furnished such tenants.

Age of Consent:—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment from ten to twenty years. Assault with intent to commit the crime, imprisonment from two to ten years. It is a crime to take any female, and by menace, force or duress, compel her to marry or yield herself to him or to any other person; or to take any female from the person having legal charge of her, for purpose of prostitution or concubinage.

Intoxicating Liquors:—Licenses to retail liquors in quantities less than a quart, or in larger quantities to be drank at the place of sale, are granted in incorporated cities or towns for a fee of seventy dollars where the population is from one thousand to five thousand; one hundred dollars where it is over five thousand; in places not incorporated, but with a population of over one thousand, the fee is fifty dollars. Druggists may fill prescriptions of any regular practicing physician, or sell for sacramental purposes, without a license. It is forbidden to sell or tipple any intoxicating beverages within four miles of any institution of learning that is not within the limits of any incorporated town. Many towns have renounced their charters in order to come within the provisions of this law. It is also forbidden to sell within one mile of any place of worship, or religious meeting, during service, or to give away liquor on election day; or to adulterate liquor; or to sell at retail on Sunday; or to any student of any educational institution without consent of parent or guardian; or to any minor after notice from parent or guardian forbidding such sale, gift or delivery.

TEXAS.

Collection of Debts.

Arrest.—There is no arrest for debt.

Attachment.—The property of a defendant may be attached if he is a foreign corporation or a non-resident, or is about to remove permanently from the state, or has refused to pay or secure the debt; or if he secretes himself or his property or has removed or disposed of his property, or is about to do so, with intent to defraud creditors. Such attachment may issue even though the debt be not yet due.

Garnishment.—There is a garnishee process. But current wages for personal services cannot be garnisheed.

Exemptions.—Exempted to every family are the following articles: All household and kitchen furniture, all implements of industry, tools or apparatus of trade or profession; family portraits, pictures and library; burial lot; five milch cows and calves; two yoke of oxen; two horses and one wagon; one carriage; one gun; twenty hogs, twenty sheep; all provisions and forage provided; necessary bridles, saddles and harness.

To every person not the head of a family, a horse, bridle, saddle, clothing, tools, apparatus, books and burial lot.

Also the *Homestead* of a family, of two hundred acres in the country, with improvements; or in town, city or village, a lot or lots to the value of five thousand dollars, and all improvements thereon. But the homestead is not exempt from debts for its purchase money, or for taxes or for work or materials for improvements thereon; though the contract for such work or materials, to be binding on the homestead property, must have been made with consent of the wife.

If a debtor dies leaving a widow or children, they shall be supported out of his estate one year; and if the exempted articles enumerated above do not exist in kind, the estate may be sold to raise their value, not exceeding five thousand dollars for homestead and five hundred dollars for personalty, which must be set apart for such widow or children.

Wages due for personal services cannot be garnisheed.

Interest.

Legal rate of interest is eight per cent., but parties may contract as high as twelve per cent. Higher rates are usurious, and penalty is forfeiture of all interest.

Insolvency.

An insolvent debtor may make a voluntary assignment of all his unexempted property for the benefit of all his creditors, or of all who, providing they receive one third of the amount of their debts, will accept the same in full discharge therefrom of the debtor.

Statute of Limitations.

Five years' peaceable possession of land, under a deed duly registered which has not been forged, cultivating and using the land, and paying taxes, gives full title thereto, unless suit to recover it by an adverse claimant be begun within that time; and ten years of such possession gives full title to one hundred and sixty acres of land and as much more besides as the party has actually inclosed or improved. Suits to recover possession of land against one who is in possession under title or color of title, must be brought within three years after cause of such action

accrues; the term "title" as here used meaning a regular unbroken chain of transfer down to the party in possession, and "color of title" a consecutive chain of such transfer, which is broken by some irregularity that does not involve fraud.

Judgment debts are good for ten years. Actions on a written contract, or between partners for the settlement of accounts, or between merchants or their agents on mutual current accounts, must be brought within four years. For injuries to property or recovery of personal property, and actions on open accounts between others than merchants or their agents, two years; injuries to person or reputation, one year.

Limitations do not run during the absence of the defendant or disability of the plaintiff. To revive an outlawed claim, written acknowledgment of the justice of the claim must be signed by the debtor.

Wills.

Every person of either sex, of sound mind and twenty-one years of age, or who is or has been lawfully married, may make a valid will of realty and personalty.

Wills that are formally executed must be signed by the testator, or by some one by his direction and in his presence, and attested by two subscribing credible witnesses above the age of fourteen years. But a holographic will is good to convey all kinds of property, being written entirely by the testator, and may be without witnesses.

Also nuncupative wills are valid, when made by soldiers or seamen in active service, or by the testator in his last sickness, at his habitation or the place where he has resided the preceding ten days, except when he is taken sick and dies away from home. If the value of the property exceeds thirty dollars, it must be proved by three credible witnesses that the testator called on some person to bear testimony that such was his will. Unless such a will is committed to writing within six days after the declaration, it cannot be admitted to probate after six months shall have elapsed.

If a will is made when the testator has no living child, and no provision is made therein for possible future children, if he leaves a child at his death, the will is made void thereby, unless such child dies before majority without having been married. And if children were born before the will was made, but another is born afterward and is not provided for by the will or otherwise, such after-born child takes the same share he would have taken had there been no will.

A married woman may be administratrix, executrix or guardian, but she must give bonds jointly with her husband; unless he refuses to join with her, when she may give them alone.

Claims against the estate of a deceased person may be presented at any time before settlement of the estate, and they may be sued against the heirs after that; but those presented within one year from appointment of executor or administrator are preferred.

Descent and Distribution of Property.

All property, real and personal, of an intestate descends as follows: If no husband or wife survives, it goes in parcenary to children and descendants of any deceased child; if none, to father and mother of intestate; if only one parent survives, half to such parent, and other half to brothers and sisters and descendants of any deceased; but if none such, all to surviving parent; if no parent, all to brothers and sisters; if none, to remoter kindred, one half to the paternal, the other half to

the maternal side. If there is a surviving husband or wife, and children, such survivor takes one third of the personalty absolutely and of the realty for life; if no children, survivor takes all the personalty and one half the realty in fee; if no near kin all the realty in fee. The community property all goes to the surviving husband or wife, if there are no children.

Curtsey and Dower.

There is no curtesy or dower.

Divorce.

Causes of divorce are as follows: Impotency at time of marriage, or any other impediment that renders such a contract void; voluntary abandonment by either party of the other for three years; intolerable excesses or cruelty of either; conviction of felony after marriage and imprisonment; in favor of the wife, if the husband has abandoned her for a less time and be living in adultery with another woman; and in favor of the husband if his wife be taken in adultery.

The plaintiff must be an actual inhabitant of the state, and a resident of the county for six months. The court has jurisdiction over the division of property and custody of children, but cannot compel a transfer of title of real estate from one party to the other.

Married Women.

All the property of either husband or wife, owned by him or her before marriage, and the increase thereof, and all property acquired after marriage by gift, devise or descent, and the increase thereof, is his or her separate property; but during the marriage the husband has the sole control and management of the wife's separate property. All separate estates must be recorded. All property acquired by either during the marriage, except by gift, devise or descent, is the common property of both; to be managed and disposed of during marriage by the husband alone. It is liable for his debts, and for hers contracted after marriage for necessities. In order to claim certain property as her own, the wife must be able to prove that she owned it before marriage or came into possession of it as a gift, or by devise in the will of some deceased party, or by descent from some ancestor who had been possessed of it. The wife may contract for necessities furnished herself or children, and for expenses for the benefit of her separate property; suit may be brought for such debts against the husband and wife jointly, and execution may be levied on the common property, or if none, on the wife's separate property. Upon death of either, one half of the common property goes to the survivor, and the rest to the children. If no children, the survivor takes the whole. Her separate estate may be conveyed away by the joint deed of both. A married woman cannot bind herself by a business partnership, nor enter into trade or business alone; but she may give security for her husband's debts. Either husband or wife may, by last will and testament, give to the survivor of the marriage the power to keep his or her separate property together, until each of the several heirs become of lawful age, and to manage and control the same; provided that such survivor be the father or mother of the minor heirs, and provided also that any such heir shall be entitled to receive his distributive portion at majority.

Miscellaneous.

Age of Majority.—Male persons under twenty-one years of age, and females under that age who have never been married, are minors. The marriage of a woman terminates her minority; and the marriage of a

man below twenty-one terminates his so far as to enable him to make a valid will of realty.

Marriage.—Males under sixteen and females under fourteen shall not marry. The consent of parents or guardian is required, if the parties to a marriage be below the ages of twenty-one and eighteen respectively.

Aliens.—An alien has the same rights in Texas, as are accorded to citizens of the United States in the land of such alien.

Homesteads.—Homesteads are granted to actual settlers upon public lands who remain three years; to heads of families, one hundred and sixty acres, to single men, eighty acres, at the mere cost of payment for surveying and patenting.

Mechanics' Liens.—Builders and mechanics of all kinds may have a lien upon buildings on which they furnish labor or material, and on the land, provided their contract was in writing; or if oral, it must be stated on oath when claiming the lien and a copy given the debtor, and recorded in the county within four months. Mechanics who repair articles have a lien therefor, and may retain the article ninety days, and then sell under prescribed regulations. Landlords have a lien on crops, and on all animals, tools, etc., furnished by them to tenants, for rent due and supplies furnished.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is death, imprisonment for life, or for any term of years not less than five, in the discretion of the jury. For assault with intent to commit the crime, imprisonment from two to seven years. It is a crime punishable by fine or imprisonment to take any female under the age of fourteen from her parent, guardian or other person having legal charge of her, for the purpose of marriage or prostitution, whether she consent or not, and although a marriage afterward takes place between the parties; the offense of abduction is complete, if she be kept as long as twelve hours, though she may afterward be relieved from detention without marriage or prostitution.

Intoxicating Liquors.—A local option law prevails, by which, on the written petition of fifty qualified voters of any county, or twenty of any justice's precinct, town or city therein, an election must be held to decide the question of prohibition in such place. For selling in violation of the law in such place where prohibition has been thus decreed, a fine may be imposed of from twenty-five to two hundred dollars for each violation. It is made the special duty of county attorneys, judges and justices of the peace to see that the local option law is enforced, and any officer failing to discharge his duty is subject to indictment and fine. All these fines go into the school fund.

Wine may be sold for sacramental purposes in the prohibited districts, and alcoholic stimulants as medicine in cases of actual sickness upon the written prescription of a regular practising physician, certifying upon honor that the same is actually necessary as a medicine.

When licenses are granted, the tax is three hundred dollars for selling in quantities less than a quart; two hundred dollars, when one quart but less than five gallons; three hundred dollars, when five gallons or more; for malt liquors exclusively, fifty dollars. It is forbidden to sell to any Indian of the wild or unfriendly tribes, or to an Indian of the Choctaw or Chickasaw territory; or to minors, without the written consent of parent or guardian.

UTAH.

Collection of Debts.

Arrest.—A defendant may be arrested in any action for the recovery of money, or damages on a cause of action arising on contract, if he is about to leave the territory with intent to defraud creditors; or if he is guilty of fraud in contracting the debt or incurring the obligation; or if he has removed or disposed of his property with intent to defraud his creditors, or is about to do so.

Attachment.—An attachment may issue against the property of a defendant in any action on a judgment, or on a contract express or implied, and not secured by a reliable mortgage or lien; or if he is non-resident, or has departed or is about to depart from the territory to the injury of his creditors; or if he stands in defiance of an officer, or conceals himself; or has assigned, disposed of or concealed his property with intent to defraud; or if he fraudulently contracted the debt.

Garnishment.—Property and debts in the possession of another may be attached or garnished.

Exemptions.—Exempted except on a judgment for the purchase price, or foreclosure of a mortgage or laborer's or mechanic's lien thereon, is the following property: Chairs, tables, desks and books, to the value of two hundred dollars; necessary household furniture, etc., to three hundred dollars; paintings made by a member of the family; provisions on hand for three months; two cows with sucking calves, two hogs and sucking pigs; farming implements to three hundred dollars; two oxen, horses or mules and harness, with food for sixty days; a cart or wagon; seed, grain or vegetables to two hundred dollars; tools or implements of mechanic or artisan to five hundred dollars; seal and records of notary public; instruments, chests and library of physician, dentist or surveyor, law libraries and office furniture of attorneys and judges, and libraries of ministers; miner's cabin to five hundred dollars, and his tools and appliances to two hundred dollars; two work beasts with harness and wagon, etc., by which a cartman, etc., earns his living; and one horse, harness and vehicle of physician or minister with feed for horse for three months. Also one half the debtor's earnings for personal services for sixty days if necessary for his family residing in the territory and supported wholly or partly by his labor. Life insurance, when the annual premium does not exceed five hundred dollars. All arms, ammunition, etc., required by law to be kept.

Also to the head of a family, the *Homestead* to value of one thousand dollars, to be selected by the debtor, and the sum of five hundred dollars to his wife, and two hundred and fifty dollars for each other member of his family, regularly depending on him for subsistence.

Interest.

The legal rate of interest is ten per cent., but any rate may be agreed on in writing. No usury laws.

Insolvency.

There are no regulations concerning insolvent debtors or assignments. The common law rules prevail, by which certain creditors may be preferred; and if an assignment is made, it does not thereby relieve the debtor from his debts.

Statute of Limitations.

Actions to recover real property must be brought within seven years from possession thereof, or from the time when title thereto accrued; any legal disability suspends the statute until it is removed. Judgment debts are good for five years; written contracts other than judgments, four years; actions for trespass to realty, or injury to or recovery of personalty, must be brought within three years; on contracts not in writing, open accounts for goods, wares or merchandise, two years; for libel, slander, assault, battery or false imprisonment, one year.

The statute does not run while defendant is out of the territory if he was away when the action accrued; nor in his favor, if he depart later. A new promise or acknowledgment must be in writing to revive a barred debt, and a part payment will not revive it unless the credit on the debt be signed by the debtor.

Wills.

Any person of sound mind and eighteen years of age, of either sex, married or single, may dispose of real and personal property by will.

Written wills (except olographs) must be attested by two subscribing witnesses who must write their residence with their names. A nuncupative will is good to bequeath personal property to the amount of one thousand dollars, if the testator was in expectation of immediate death from casualty or injury which happened within twenty-four hours previous to the making of such will. It must be reduced to writing within thirty days and proved by two competent witnesses within six months. An olographic will must be entirely written and signed by the hand of the testator, and need not be witnessed. A conjoint or mutual will is valid, but it may be revoked by any of the testators, as may any other will.

Corporations other than those formed for scientific, literary, religious, charitable, benevolent or solely educational purposes, cannot take any gift under a will unless expressly authorized by statute.

A will is revoked by subsequent marriage and birth of a child, if wife or issue survive the testator and are unprovided for by the will or other settlement, nor mentioned in the will in such manner as to show an intention of not making such provision.

A married woman who is appointed executrix may serve as such, and a married woman may be appointed administratrix unless objection be made by some person interested in the estate. If an unmarried woman who is executrix or administratrix marries, the court may, upon motion of any person interested in the estate, revoke her authority and appoint another in her place.

Wills duly sealed up and indorsed, may be deposited with the clerk of the probate court, whose duty it is to file and safely preserve the same until the death of the testator unless he himself demands it sooner.

Descent and Distribution of Property.

Real and personal estate descends alike as follows: If the intestate leaves a widow or widower and only one child or the issue thereof, one third goes to widow or widower, residue to such child or descendants thereof; if more than one child or descendants thereof, one fourth goes to widow or widower, residue equally to children; if no child or descendants, one half to widow or widower, the other half to intestate's parents in equal shares, or if only one parent, to him or her; if no parent, such share goes to brothers and sisters of intestate equally. If no child or de-

scendant, and no widow or widower, the entire estate goes to parents or parent, or lacking either, to brothers and sisters. If no child or descendant, no parent, brother or sister, but a widow or widower, all the estate goes to such survivor.

If intestate was head of a family, and the estate does not exceed fifteen hundred dollars in value, it shall all be assigned to the family without further administration, and in any case, property exempted by law from execution goes to the surviving family in equal shares, not subject to the payment of debts, nor to the payment of any bequest or legacy.

Curtesy and Dower.

Curtesy and dower are abolished.

Divorce.

Causes for divorce are as follows: Impotency; adultery; wilful desertion for more than a year; habitual drunkenness; conviction of felony; extreme cruelty; wilful neglect to provide the wife with common necessities of life.

A *bona fide* residence of a year is now required within a county within the jurisdiction of the court. Court will give alimony and an allowance for the maintenance of children. But children of ten years may select the parent with whom they prefer to live.

The guilty party also forfeits all property rights acquired by the marriage.

Married Women.

All property owned by either husband or wife before marriage, or acquired afterward, is his or her separate property, and may be held, managed and transferred in any way as if he or she was single. A wife may sue or be sued alone, and may carry on business with or concerning her separate property, and bind herself by promissory notes and all other contracts relating thereto.

Miscellaneous.

Age of Majority.—A man is of legal age at twenty-one, and a woman at eighteen; but either party may attain their majority by marriage at an earlier age.

Testimony.—Neither husband nor wife can be compelled to give testimony against the other without the latter's consent, nor as to any communication made by one to the other during marriage; but this rule does not apply to any action or proceeding, civil or criminal, by one against the other.

Women.—Women have equal suffrage rights with men.

Guardians.—The father, or if dead, the mother, if competent to transact his or her own business and not otherwise unsuitable, must be entitled to the guardianship of minor children.

Age of Consent.—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment for a term of not less than five years; for assault with intent to commit, from one to ten years. Inveigling or enticing any female of previous chaste character into any place for the purpose of prostitution, or any aiding or abetting therein, is a crime, punishable by fine or imprisonment or both; as is also the taking from her father, mother, guardian, or other persons having charge of her, any female below the age of eighteen years, without their consent, for that purpose.

An unmarried female who, while under the age of twenty years is seduced, may maintain a civil action for damages in her own name.

Intoxicating Liquors:—County courts and city councils may issue licenses for the sale of intoxicating liquors, the fee for which shall be at the rate of not less than one hundred and not more than twelve hundred dollars per year, the rates being uniform for the same classes of business in any county or city. It is forbidden to sell to Indians; insane or idiotic persons; minors, apprentices or employes under twenty-one years of age, without consent of parents, guardians or employers; or to sell on Sunday except for medical purposes on a physician's prescription; or to sell within one mile of any camp or field meeting during the time of such meeting; or to give or sell to any minor under sixteen years of age, to be drank by him at the time as a beverage.

VERMONT.

Collection of Debts.

Arrest.—Arrest for debt can be made only on filing of affidavit by plaintiff that he believes defendant is about to abscond and has secreted money or property to amount of twenty dollars not exempt. Arrest may be made in all actions of tort. No female can be arrested in any action of contract.

Attachment.—Property may always be attached when, or before, the writ is served on a defendant; but never before the debt is due.

Trustee Process or Garnishment.—There is a trustee process, by which property or money due a debtor, in the possession of a third person or corporation, may be applied to the payment of the former's debts. The debt sued upon, and that due the debtor from the trustee, must both exceed five dollars. A wife's earnings cannot be trustee for her husband's debts.

Exemptions.—The following articles are exempted: Suitable apparel, bedding, tools, arms and articles of household furniture necessary for upholding life; one sewing-machine in use; one cow; the best swine or the meat of one swine; ten sheep and one year's wool, yarn or cloth therefrom; food for these animals through one winter; ten cords of wood or five tons of coal; twenty bushels of potatoes; military arms, etc., of militia man; all growing crops; ten bushels grain; one barrel of flour; three swarms bees and hives and their honey; two hundred pounds sugar; all lettered gravestones; Bibles and other books in use; church pew; live poultry to value of ten dollars; books and instruments necessary to professional man, to value of two hundred dollars; two working animals or horses to value of two hundred dollars and food for winter; and wagon or ox-cart, harnesses, etc., which with the steers or horses shall not exceed two hundred and fifty dollars in value; one tool-chest of a mechanic. Also a *Homestead* to value of five hundred dollars to any housekeeper or head of a family, which cannot be mortgaged by the owner unless his wife joins in the mortgage.

Exempted property goes to widow and children of a debtor, relieved from his debts, or from any provision of his will. The right of children to the homestead continues only during minority.

Interest.

The legal rate of interest is six per cent. Higher rates are usurious, the penalty for which is the forfeiture of the excess above the legal rate, which may be recovered back by the one who paid it, if he brings action therefor within six years.

Insolvency.

The insolvent law provides for voluntary and involuntary assignments by an insolvent debtor for the benefit of his creditors, its terms being similar to those of the United States bankruptcy law. All preferences to certain creditors made within four months of the petition by or against the insolvent are disallowed. If the assets pay thirty per cent. of the amount of debts proven, the insolvent may be discharged entirely from further liabilities thereon; if a less proportion is paid, no discharge is

given unless by voluntary consent of a majority in number and amount of the creditors.

An application by creditors that a debtor be declared insolvent can only be given if the debtor, residing in the state and owing debts exceeding three hundred dollars, departs from the state with intent to defraud creditors; or being absent, with such intent remains absent; or conceals himself or his property, or assigns or transfers it, with intent to defraud or hinder creditors; or in some other cases showing a like fraudulent intent.

Statute of Limitations.

Actions for the recovery of lands must be brought within fifteen years; on witnessed promissory notes, fourteen years; on contracts under seal, eight years; on unsealed contracts, judgments of any court not of record, debt for rent, trespass to land, taking or injuring personalty, six years; assault and battery, three years; slander and libel, two years.

The absence of the defendant from the state without having known attachable property in the state is not computed; nor is the time during which the plaintiff is under disability. A new promise or acknowledgment, to revive an outlawed debt, must be in writing; or part payment is sufficient; but if the contract is a written one, the indorsement upon it of such payment must be in the handwriting of the party making it.

Wills.

Any man of sound mind and twenty-one years, or woman of eighteen years, married or single, may make a valid will.

Three subscribing witnesses are required, except to nuncupative wills, which may be made by soldiers and sailors to the full extent of their personal property, but by those in last sickness only to the value of two hundred dollars, and then only if a memorandum of the wishes of the testator is reduced to writing within six days, by some person who was present, and if it is presented for probate within six months from the death of the testator.

When a woman who is an administratrix or executrix marries, her authority thereby ceases. A woman's will is probably not revoked by her subsequent marriage.

Descent and Distribution of Property.

The real estate of an intestate descends as follows: If intestate leaves a widow or widower, and no children or descendants, the survivor takes all to the value of two thousand dollars, and half of the residue above that value, the other half going as the whole would do if there was no such survivor. If there is a child or children or descendants of any deceased, widow takes one third of all of which husband died in possession, and residue goes equally to children or descendants. If no widow or children or descendants, estate goes to father; if no father, to mother, brothers and sisters and to descendants of any deceased. If no such relatives, to next of kin. Kindred of half blood inherit equally with those of whole blood. If no kindred, estate escheats to town for the school fund.

Personal property of an intestate is distributed as follows: Widow takes such part as the probate court may assign to her, being not less than one third of the residue after payment of debts and charges; and also her personal apparel and ornaments. If the personalty does not exceed three hundred dollars, all may be assigned for support of

widow and children, and the residue above that sum, after payment of funeral charges and expenses of administration, is distributed in the same way as realty.

Curtsey and Dower.

Common law dower prevails, with this difference, that the widow has a life interest in one third of all the realty of which her husband is possessed when he dies,—not in that which has passed out of his possession before his death. Her signature, therefore, is not necessary to enable him to convey his realty, but his joint conveyance is necessary to bar his claim of curtesy in her realty.

Divorce.

Causes of divorce from bonds of matrimony are as follows: Adultery; sentence and imprisonment at hard labor in state prison for life, or for three years or more if suit is brought during such imprisonment; intolerable severity; absence, unheard from, for seven years; wilful desertion for three consecutive years; gross or wanton and cruel refusal or neglect by husband, being of sufficient ability, to provide for his wife.

No divorce will be granted in any case, unless the parties have lived together as man and wife in this state at some time, nor unless the plaintiff has resided in the state one full year next prior to filing of the libel. Nor for any cause occurring in any other state or country, unless the parties have lived together at some time in the state, and one of the parties was then living in this state, except for adultery, intolerable severity or three years' desertion, divorce may be granted when such cause first happened while the parties were residing in another state or country, if the plaintiff shall have resided in this state two years after the first accruing of such cause, and within the county where the petition is filed one full year next prior to such filing. The guilty party cannot marry any other person than the plaintiff within three years after the decree; if he does so, or lives in this state in such forbidden marriage relation within three years, he may be sentenced to hard labor in prison for one to five years.

Married Women.

All real and personal property owned by a woman at marriage, and the rents, issues and profits thereof; and all personal property acquired by her during marriage in any manner except by her personal industry or by gift from her husband, constitutes her separate property, free from her husband's debts, except that the annual products of her real estate are liable for such debts as the husband may incur for necessities furnished for the wife and family, or for labor or materials, or cultivation or improvement of the property.

A married woman may make any contract as if single, binding herself and her property thereby, and sue and be sued alone concerning them. But a contract between husband and wife is not binding, and a wife cannot become surety for her husband's debts except by mortgage of her property duly executed by both husband and wife.

No husband is liable for any debt contracted by his wife before marriage, unless the marriage was contracted previous to January 1, 1884; nor for torts of his wife unless committed by his authority or direction.

Miscellaneous.

Age of Majority.—Women attain majority at eighteen.

Guardians.—The father of minor children, born or unborn, may ap-

point a guardian for them by his last will. But the father, or if dead, the mother, is the natural guardian of children, and shall have their custody and education, if competent; but if she marry again, another guardian may be appointed.

Women.—Women may vote at all school district meetings and for election of school commissioners in towns and cities, and are eligible to hold all school offices, and to be town clerk.

Testimony.—A married woman may testify when she is a party with her husband; and when he is a party and she is not, she may testify in the following cases: In actions upon policies of insurance, as to amount and value of property in question; in actions against carriers as to loss of property and its value, and her own injuries; in all matters of business conducted by the wife as agent for the husband. But she cannot testify to admissions of the husband made to herself or to another.

Mechanics' Liens. A mechanic's lien for work or materials in repairing or erecting buildings, must be recorded in the town clerk's office of the town where situated, and action must be taken thereon within three months, if the debt is then due, or within three months after it becomes due.

Age of Consent.—The "age of consent" is eleven years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment not exceeding twenty years and a fine not exceeding two thousand dollars, or either. An assault with intent to commit the crime, by imprisonment not exceeding ten years, and fine not exceeding one thousand dollars, or either.

Intoxicating Liquors.—The manufacture, sale or giving away of intoxicating liquor, or malt liquors or beer, is prohibited; but cider is excepted, and wine for sacramental purposes, or of wine for medical purposes only, made in the state from grapes or other fruit, without admixture of alcohol or spirituous liquor. The county commissioner appoints an agent annually for any town in the county, to sell intoxicating liquor at some convenient place, to be used for medicinal, chemical and mechanical purposes only, the liquor to be furnished him by the selectmen, at the expense of the town. If any one procures, or attempts to procure liquor from such agent by falsely misrepresenting the purpose for which it is to be used, he may be fined. Liquor kept contrary to law may be seized and destroyed. It is forbidden to give liquor to a minor other than a member of the giver's own family, or to an habitual drunkard, even in a private house by a private person. Also to give away liquor at an assemblage of persons gathered to erect or remove a building, or at a public gathering for amusement. The wife or minor children of any person who is confined in any prison by reason of intoxication, may recover one dollar per day from the time of such imprisonment, from the person who, by himself or his clerk or agent, illegally furnished any part of the liquor which caused such intoxication.

VIRGINIA.

Collection of Debts.

Arrest.—There is no arrest for debt; but on affidavit showing that defendant is about to quit the state, bail may be required in such sum as the court may think fit.

Attachment.—The property of any tenant who owes rent may be attached, also that of defendants who are non-resident, or who are removing themselves or their effects out of the state, or about to do so.

Garnishment.—There is a garnishee process for recovering debts out of property or money of the debtor in the hands of a third party.

Exemptions.—Exempted in favor of a householder or head of a family are the following articles: (But an unmarried person who keeps house, and has hirelings on his farm, is not a householder.) Family Bible, pictures, school-books and library, to value of one hundred dollars; church pew and burial lot; necessary clothing, beds and bedding, stoves to number of three; one cow, one horse, a certain amount of household and table furniture of specified kinds, also of food; one sewing-machine; mechanic's tools to value of one hundred dollars; to a farmer, one pair of working animals, one wagon, two plows and other implements.

Also a *Homestead* of value of two thousand dollars, or its value in personal property. This homestead exemption can be waived, by express stipulation in the contract for the disposal of the property; but the articles exempted by the "poor law exemption," as the articles enumerated above are called, cannot be waived. The homestead property may also be mortgaged or sold by the joint act of husband and wife, or if the householder be unmarried, by his act alone. If the householder die without claiming his exemption, the right survives to his widow and minor children. The homestead is not exempt from a demand for its purchase money, for services of a laboring person or mechanic, for taxes, or rent.

Interest.

The legal rate of interest is six per cent. All higher rates are usurious, and usury renders all contracts void, even negotiable paper in hands of *bona fide* holder for value, though it has been held that such a party could recover from his immediate indorser.

Insolvency.

There are no insolvent laws. A debtor may make a voluntary assignment of his property for the benefit of his creditors, but he will not be thereby discharged from the balance of the claims against him unless by voluntary agreement of his creditors. He may prefer creditors.

Statute of Limitations.

An action to recover land lying east of the Alleghany mountains must be brought within fifteen years; lying west of the mountains, within ten years. Sealed contracts are good for twenty years; contracts written but not sealed, for five years, so also most other contracts, except for articles charged in a store account, in which case action may be brought within two years; an action between merchants or their agents, concerning the trade of merchandise, or between partners for a settlement of the partner-

ship accounts, may be brought within five years from a cessation of dealings, and most personal actions are also barred by lapse of five years.

To revive a barred debt, there must be a new promise in writing; part payment will not be sufficient.

Wills.

Any man or single woman of sound mind and twenty-one years of age, may make a valid will of realty; of personalty, at eighteen.

A married woman may make a will for the disposition of her separate estate as if unmarried.

Two subscribing witnesses are required, except to olographic or nuncupative wills.

The marriage of a testator or testatrix revokes a will made previously; and if a child is born after a will has been made which does not provide for him, such child, if also unprovided for by any settlement, may take the portion which would have been his had his parent died intestate, unless such child dies before attaining majority and unmarried.

The ordinary statutes of limitations govern the presentation of claims against the estate of a deceased person.

The marriage of an executrix or administratrix extinguishes her authority.

Descent and Distribution of Property.

Real estate of an intestate descends in parcenary to such of his kindred as are not aliens, as follows: To his children and their descendants; if none, to his father; if no father, to mother, brothers and sisters, and descendants of any deceased; if no such relatives, it goes to remoter kindred, half to the paternal side, half to the maternal; if none on the paternal side, all to that on the maternal, and *per contra*; if no kindred, to husband or wife of intestate, or if dead, to kindred of such pre-deceased husband or wife.

Collaterals of the half blood inherit only half as much as those of the whole blood. There are other peculiarities of the law of descents, too many and complicated to be given here.

Personal estate is distributed as real estate, except that the husband of an intestate wife, takes all her personalty after payment of debts, charges, etc.; the widow of an intestate husband takes one third of the personalty if there are children; if no children, she takes all the personalty which came to him by virtue of the marriage with her, and one half of his other personalty; unless he leave issue by a former marriage, in which case she takes one third instead of one half of such other personalty.

Curtsey and Dower.

Common law curtesy and dower prevail. The wife's adultery bars her claim to dower, unless the husband forgive her.

Divorce.

Causes of divorce from bonds of matrimony are as follows: Consanguinity or affinity; adultery; impotency; insanity at time of marriage; confinement in penitentiary; conviction of infamous offense prior to the marriage, and unknown to the other party at time of marriage; indictment for offense punishable with death or confinement in penitentiary, escape and absence for two years; wilful desertion for five years; pregnancy of wife at marriage by another than the husband and without latter's knowledge; or where, prior to marriage and without husband's

knowledge, wife had been notoriously a prostitute. A divorce from bed and board may be given for cruelty or reasonable apprehension of bodily hurt, or desertion.

The parties, or one of them, must be resident in the state at time of bringing suit. Court may decree temporary alimony; also with a divorce, may decree farther concerning support and maintenance of the parties and of their children, and the custody of the children.

Married Women.

All property, real and personal, owned by a woman at marriage, or acquired by her thereafter, and the rents, issues and profits thereof, constitutes her separate estate, free from her husband's debts. Also all property acquired by her as sole trader. She may become a sole trader by her husband's consent.

She may contract regarding her separate estate, but, except when her contracts concern her business as sole trader, her husband must join in such contracts. When made, they are binding on her separate estate. Neither party is liable for the ante-nuptial debts of the other. The husband must be joined in suits against her, or brought by her. She may make a will, but not so as to deprive him of his curtesy in her realty.

Miscellaneous.

Age of Majority:—The age of majority for both sexes is twenty-one, but a person of either sex may make a valid will of personality at eighteen.

Mechanics' Liens:—All who perform labor or furnish material for the construction or repair of any building or other property, may have a lien therefor on the property and the land. A general contractor within ninety days, and any sub-contractor or other person within thirty days after the completion of the work, must file an account of the matter in the clerk's office of the county or incorporated place where the property is situated; and any sub-contractor or person other than the general contractor must also furnish the owner of the building with an affidavit showing the amount due and remaining unpaid.

Age of Consent:—The "age of consent" is twelve years. The punishment for criminal knowledge of a child below that age, or for rape, is death, or imprisonment from ten to twenty years, at the discretion of the jury. Any taking away of a female or detaining her against her will, with intent to marry her or to compel her to yield to the abductor or another, is punishable by imprisonment, as is also the taking of any female child below the age of twelve from any person having legal charge of her, for the purpose of prostitution or concubinage.

Intoxicating Liquors:—In many places local option prevails, either by special legislation, or by virtue of the charters of certain cities and towns. The state laws cannot interfere with these local privileges, but in the rest of the state a license law prevails by which licenses are divided into three kinds, namely: Those for wholesale dealers, retail merchants and bar-room keepers. Those of the first class cannot sell in less quantities than five gallons, except malt liquors in bottles and jugs by the dozen; of the second class, can only sell in quantities less than five gallons, but not to be drank on the premises; the third class cannot sell liquor to be carried away, but only to be drank on the premises. The fee for the first class of license is three hundred and fifty dollars, or for malt liquors only, one hundred and fifty dollars. For the second class, in places of less

than one thousand population, seventy-five dollars; of more than one thousand, one hundred and twenty-five dollars; or for malt liquors only in places of less than five thousand inhabitants, thirty dollars. For keeping a bar-room in places of one thousand inhabitants, seventy-five dollars and also fifteen per cent. of the rental value of the bar-room; in larger places, one hundred and twenty-five dollars and the extra percentage; for a malt liquor saloon, forty dollars in places of less than one thousand population, and sixty dollars in larger places. Any druggist, to sell other than in the preparation of medicine, must take out a retailer's license. It is forbidden to sell liquor on election day or Sunday; or near religious meetings (unless in the usual place of business of a licensed seller.)

WASHINGTON TERRITORY.

Collection of Debts.

Arrest.—A debtor may be arrested in an action brought to recover the debt, only when he was guilty of fraud in contracting it, or incurring the obligation; or when he has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or on final judgment or order of court, when the defendant has no property subject to execution, but has money which he fraudulently refuses to apply in payment. An action may begin and warrant of arrest issue upon any written agreement before the time for its performance expires, if the defendant is about to leave the territory without providing for its performance, taking with him his property, with intent to defraud the plaintiff.

Attachment.—An attachment may always issue against the property of a defendant, unless the claim is already secured by an adequate mortgage, lien or pledge of, or upon, property.

Garnishment.—Property of the debtor in the hands of another, or money due him, may be garnished by his creditor, except that his earnings for personal services within sixty days next preceding cannot be taken, if they are necessary for the use of his family.

Exemptions.—All wearing apparel, private libraries, family pictures and keepsakes, are exempt to any debtor.

Also to each householder, one bed and bedding, and one additional for every two additional members of the family, and other household goods to the coin value of one hundred and fifty dollars; two cows and their calves, five swine, two stands of bees, twenty-five domestic fowls, and provisions and fuel for six months. To a farmer, one span of horses and harness, or two yokes of oxen and a wagon, and farming utensils to the value of two hundred dollars. To a mechanic, the tools necessary for his trade, with materials therefor to the value of five hundred dollars. To professional men, their libraries to the value of five hundred dollars, and to a physician his horse and carriage, instruments and medicines, or to an attorney or clergyman his office furniture, stationery and fuel. All fire-arms kept for use, and a small boat to value of fifty dollars. To a drayman, his team. To a person engaged in lightering, one or more lighters or scows and a small boat, to aggregate value of two hundred and fifty dollars. To a logger, three yokes of work-oxen; and implements to value of three hundred dollars.

Also to a householder being the head of a family, a *Homestead* to the value of one thousand dollars, while occupied as such.

No property is exempt from a judgment for its purchase price or for taxes.

Interest.

The legal rate of interest is ten per cent., but any rate may be agreed upon in writiug. No usury laws.

Insolvency.

An insolvent debtor may surrender all his property to his creditors, and if not convicted of any fraud in so doing, may receive a discharge

from all his debts by virtue of the insolvent law. Wages of laborers, servants, mechanics and others to the amount of one hundred dollars each, and all moneys earned within sixty days previously are preferred claims.

Statute of Limitations.

Actions for the recovery of real property must be begun within ten years of actual seizure or possession of the premises by the plaintiff, or his predecessor or grantor. Action upon a judgment or decree of any state or territory must be begun within six years; also upon a written contract, or any liability, expressed or implied, growing out of a written contract; also for rents and profits, or use and occupation of real estate. Actions for waste or trespass to realty, or for detaining or injuring personalty, three years; also actions on unwritten contracts, for relief on the ground of fraud, for seduction and breach of promise, three years. Actions for slander or libel, assault, battery, false imprisonment, two years.

Any new promise or acknowledgment of the debt must be in writing, in order to renew the obligation; but any part payment of principal or interest is sufficient.

Wills.

Men of sound mind and twenty-one years, and women of sound mind and eighteen years, married or single, may make a valid will of real or personal property.

Two or more competent witnesses must subscribe every written will. Nuncupative wills may be made by soldiers and sailors, and persons in last sickness, to dispose of personalty, but if the estate bequeathed by one in his last sickness exceeds two hundred dollars in value, such a will must be proved by two witnesses who were present at the making, and the testator must have bidden some person present to bear witness that such was his will. The testator must have made the declaration at his dwelling-house, or place of his residence for ten days or more, unless he was taken sick and died away from home. A nuncupative will must be committed to writing and probated within six months of the speaking.

A will made before marriage is revoked thereby if the widow survives the testator, and is unprovided for, either by any settlement or the will, and is not mentioned in the will in such manner as to show an intention not to make such provision. Probably the same rule applies to the revocation of a woman's will made before marriage, if her husband survives her. If any person makes a will and dies, leaving a child or his descendants not named or provided for therein or otherwise, such child or his descendants take such a portion as he or they would have taken had the testator died intestate.

Claims against the estate of deceased persons must be presented within one year.

Descent and Distribution of Property.

The real estate of an intestate descends as follows: If there is a surviving husband or wife, and one child, in equal halves to each; if more than one child, one-third goes to husband or wife, and the rest equally to the children, the descendants of any deceased child taking his share. If no children, half to husband or wife, the other half to intestate's parents or parent, or if neither, to his brothers and sisters equally. If no child, parent, brother or sister, all goes to surviving husband or wife. If no such relative or husband or wife, to next of kin in equal degree.

The community property, at the death of either husband or wife, is subject to the community debts, and then divided, one half going to the survivor, and the other half being disposed of by will of the deceased, or if no will, it descends to children and their descendants; but if there be no children or descendants, it all goes to surviving husband or wife.

Personal property is distributed like realty, after payment of debts and charges, unless there is a surviving husband or wife, when he or she takes it all, or if there are children, he or she takes half, and they the other half. Also the widow is allowed all articles of apparel or ornament, according to the degree or estate of her husband, and such provisions and other necessities as are ordered by law, before the personalty is applied to the payment of debts.

Curtsey and Dower.

There is no curtesy or dower; the community system prevailing instead.

Divorce.

Causes for divorce are as follows: Adultery; impotency; abandonment for one year; cruel treatment or personal indignities rendering life burdensome; habitual drunkenness; imprisonment in the penitentiary, if complaint is filed during such imprisonment; marriage obtained by force or fraud and no subsequent voluntary cohabitation; in favor of the wife, for neglect or refusal of the husband to make suitable provision for his family; or any other cause deemed by the court sufficient, if the court is satisfied that the parties can no longer live together.

Residence for one year in the territory by the plaintiff gives divorce jurisdiction. The court may make such orders pending decree, for the disposition of the persons, property and children of the parties, as may be deemed right; and may require the husband to pay all reasonable expenses of the wife in her prosecution or defense of suit, whether the divorce is granted or not; and on giving a decree, may make just and equitable disposition of the property of the parties and the custody of the children.

All divorces are absolute, but neither party shall be capable of contracting marriage with a third party till expiration of the period within which an appeal may be taken to the supreme court.

Married Women.

All property, real and personal, owned by either husband or wife at marriage, and all acquired afterward by gift, devise or descent, is his or her separate property, free from the debts of the other; all acquired during marriage in any other way, is the community property of both, subject to the management and control of the husband, who may dispose at will of the personalty, but cannot sell or encumber the realty unless the wife joins therein.

Contracts may be made by a wife, and liabilities incurred, as if single. She may receive the wages of her personal earnings, and maintain an action therefor in her own name and prosecute and defend all actions for the preservation and protection of her property rights as if unmarried.

A statute expressly provides that all laws which impose or recognize civil disabilities upon a wife which are not equally imposed upon or recognized concerning a husband, are abolished. The rights and responsibilities of the parents, in absence of misconduct, are equal, and the mother as fully entitled to the custody, control and earnings of minor children as the father; and in case of the father's death the mother comes into as full and complete control of the children and their estate as the father does in case of the mother's death.

Miscellaneous.

Age of Majority:—Women are of legal age at eighteen.

Guardians:—(See Married Women.)

Women:—Women have full political rights; they vote at all elections, serve on grand and petit juries, and are eligible for all offices.

Mechanics' Liens:—Every building, and the interest of the owner in the land on which it is erected, and every wharf, bridge, railway or other work of internal improvement, is liable for the payment of any labor performed or materials furnished in its construction or repair. For work on saw-logs, spars, timber or lumber, a lien may lie, but it must be filed within thirty days from the time it accrued, and action be taken within twelve months thereafter. All vessels are liable for services rendered on board, supplies furnished, or labor and material employed in their construction, repair or equipment, and wharfage and anchorage, also for breach of contract of transportation of persons or property, etc. A farm laborer has a lien for wages on the soil he has tilled and the crops he has helped to raise.

Age of Consent:—The "age of consent" is twelve years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment for life or for any term of years. For assault with intent to commit the crime, imprisonment from one to fourteen years. It is a crime, punishable by fine and imprisonment, to take any woman unlawfully and against her will and by force, menace or duress, compel her to marry or yield herself to the abductor or any other; or to take or entice any unmarried female below the age of fifteen years from her parent, guardian or other person having legal charge of her person, without their consent, for the purpose of prostitution; or to seduce any unmarried woman of previous chaste character, but if the defendant marry the woman so seduced, it is a bar to further prosecution for the offense.

Intoxicating Liquors:—A local option law prevails, by which the question of prohibition in any locality may be decided by popular election. (The law was passed by the legislature of 1885-6, and the volume containing it not being yet available, the particulars cannot be given here.) It is forbidden to sell intoxicating liquor to Indians, or to a minor without the written permission of his parent or guardian; or within one mile of any religious meeting. Every husband, wife, parent, child, guardian, employer, or any other person who shall be injured in person, property or means of support by any intoxicated person or in consequence of such intoxication, habitual or otherwise, may recover damages therefor from the person who caused the intoxication, in whole or in part by selling or giving liquor; also from any person owning, renting, leasing or permitting the occupation of any building or premises, knowing that intoxicating liquors were to be sold therein.

WEST VIRGINIA.

Collection of Debts.

Arrest.—There is no imprisonment for debt, except in cases of fraud and absconding creditors.

Attachment.—An attachment may issue against the property of a debtor if he is a foreign corporation or is non-resident; or has left the state or concealed himself, or concealed or disposed of his property, with intent to defraud his creditors, or is about to do so; or if the debt itself was fraudulently contracted. An attachment may issue whether the debt is due or not, except against a foreign corporation or non-resident debtor against whom no fraud is shown.

Garnishment.—There is a garnishee process by which a creditor may recover his debt out of the property or money of a debtor in the hands of a third person.

Exemptions.—Exempted in favor of any husband or parent resident in the state, or of the infant children of any deceased parent, is personal property to value of two hundred dollars, and a *Homestead* to the value of one thousand dollars, provided it has been properly recorded as such among the public land records of the county where situated.

Also to any resident mechanic, artisan or laborer, whether husband or parent or not, working tools of his trade or occupation to value of fifty dollars; but the whole amount of exempted personal property allowed to any one person shall not exceed two hundred dollars in value.

There is no exemption from claims for the purchase money of property, or for taxes or improvements.

Interest.

The legal rate of interest is six per cent. Higher rates are usurious, and the penalty is forfeiture of the excess. But incorporated companies are excepted, and may borrow money at higher rates.

Insolvency.

There are no insolvent laws, but an insolvent debtor may make a voluntary assignment of his property for the benefit of some or all of his creditors, with or without preferences. The debtor is not thereby relieved from his debts, except so far as he may stipulate to that effect with certain of his creditors in whose favor he assigns.

Statute of Limitations.

Actions to recover land, and actions on judgment debts, must be brought within ten years; on written contracts, sealed or unsealed, ten years; other contracts, five years, except for articles charged in a store account, three years; most other personal actions must be brought within five years.

A new promise or acknowledgment must be in writing to revive a barred debt.

Wills.

Every person of sound mind and twenty-one years old, of either sex, married or single, may make a will of realty; of personalty, at eighteen.

All wills must be written and signed by the testator, and all except

holographs must be attested also by two subscribing witnesses. Nuncupative wills are valid only when made by seamen or soldiers in active service.

Every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment in cases where the estate could not in any event have gone to the heirs, personal representatives or next of kin.

Descent and Distribution of Property.

Real estate of an intestate descends in parcenary as follows: To children and descendants of any deceased child; if none, to father; if no father, to mother, brothers and sisters and their descendants; if none, to remoter kindred, half to the paternal, and half to the maternal side; if no kin, to husband or wife of intestate, or if dead, to kindred of such pre-deceased husband or wife. Collaterals of half blood inherit only half as much as collaterals of whole blood.

Personalty is distributed in the same way with the exception that a husband takes all his wife's personalty if she leaves no children; if there are children, the husband takes a third; a widow takes her husband's personalty in the same way.

Curtsey and Dower.

Common law curtesy and dower prevail.

Divorce.

Causes for divorce from bonds of matrimony are as follows: Adultery; impotency; wilful desertion for three years; sentence to confinement in penitentiary; conviction prior to marriage of infamous offense, unknown to the other at time of marriage; pregnancy of wife at marriage by another than, and without knowledge of, the husband; wife notoriously a prostitute prior to marriage, without husband's knowledge; husband notoriously a licentious person prior to marriage and unknown to wife.

Marriages may in the state be decreed null and void for bigamy; consanguinity, or affinity; insanity or impotency at time of the marriage; non-age; or marriage of white person and negro.

Divorce from bed and board may be decreed for cruel or inhuman treatment; reasonable apprehension of bodily hurt; desertion; or habit of drunkenness contracted after marriage. Court may make such further decrees as it deems expedient concerning estate and maintenance of the parties, and custody of the children. The parties, or one of them, must have resided in the state one year to give jurisdiction.

Married Women.

All property owned by a woman before marriage, or afterward acquired by her from any source except from her husband, and the rents, issues and profits thereof, constitutes her separate estate, free from the debts or control of her husband. She may dispose of it by sale, conveyance, will or otherwise, except that to dispose of her realty thus acquired, her husband must join, unless she is living separate and apart from him, when she may convey all her realty alone, and may carry on any trade or business in her own name, and contract in regard to it; and the issues and profits thereof, and her earnings are her own free from her husband's debts or control. Her separate property is liable for her ante-nuptial debts; her husband is not liable for them, unless he obtains possession of her separate estate or some part of it. She may obtain a patent on her inventions, and enjoy the proceeds as if single; and she may insure her

husband's life. She may contract freely concerning her separate personal estate, and may dispose of it by will, gift, sale, conveyance or otherwise, and so of the rents, issues and profits of her realty, but her realty itself she cannot dispose of unless her husband joins. Her separate estate is not liable for debts incurred by her as her husband's agent for support of the family; but if she makes the contract as her own, it may be liable.

Miscellaneous.

Age of Majority:—The age of majority for both sexes is twenty-one; but wills of personalty may be made at eighteen.

Testimony:—Husband and wife are competent witnesses for or against each other, except as to confidential communications made between them during the marriage.

Mechanics' Liens:—Every person who performs labor or furnishes materials for the erection or construction of any building or its appurtenances by virtue of any contract with the owner or his agent, or any person who works under such contractor, may have a lien on the building and land. It must be filed with the clerk of the county court within sixty days; and one working under a contractor must also within thirty days, give written notice to the owner.

Age of Consent:—The "age of consent" is twelve years. The punishment for criminal knowledge of a child below that age, or for rape, is death, or confinement in the penitentiary from seven to twenty years, at the discretion of the jury. It is a crime punishable by imprisonment, to take away or detain any female against her will, with intent to effect her marriage or to cause her to yield to any person, the abductor or another. So also to take from the person having legal charge of her any female child, under twelve years of age, for the purpose of prostitution or concubinage.

Intoxicating Liquors:—On licenses to retail intoxicating liquors, the tax is one hundred dollars; at wholesale, three hundred dollars; to retail domestic wines and beer only, twenty dollars. A druggist may sell, without license, in good faith for medicinal or mechanical purposes, on prescription of a physician in good standing; if he sells otherwise, he may be fined twenty to one hundred dollars; and if a physician gives a prescription falsely, he may be fined fifty to two hundred dollars. It is forbidden to sell to minors, or persons of unsound mind, or who are intoxicated or in the habit of drinking to intoxication; or to sell or give liquor on Sunday. All places wherein liquor is sold unlawfully are common nuisances and may be abated as such, and their owners and proprietors indicted. Any husband, wife, child, parent or guardian may serve upon any person engaged in the sale of intoxicating liquors a notice not to sell or furnish such liquors to his or her wife, husband, parent, child or ward; if the order is disobeyed and the person named becomes intoxicated, the seller is liable for any damage he may do by means of such intoxication.

WISCONSIN.

Collection of Debts.

Arrest.—There is no arrest on any cause of action arising out of contract. No female can be arrested except for wilful injury to person, property or reputation.

Attachment.—Any creditor may obtain a writ of attachment upon the property of his debtor, if the debt exceeds fifty dollars, and if the defendant has absconded or concealed himself or his property or is about to do so, with intent to defraud his creditors; or if the debt was fraudulently contracted, or the debtor is non-resident or a foreign corporation.

Garnishment.—There is a garnishee process by which property or money of a debtor, in the hands of a third person or a corporation (except a municipal corporation—that is, a town or city) may be applied to the debts of the former.

Exemptions.—Exempted from seizure are the following articles: Family Bible, pictures and school books, and entire private library; church pew and burial lot; all wearing apparel, bed, bedding, etc., stoves and appendages in use, cooking utensils, and other household furniture to value of two hundred dollars; one gun or other fire arm to value of fifty dollars; two cows, ten swine, one yoke of oxen and one horse or mule, or in lieu thereof, two horses or two mules; ten sheep and their wool, raw or manufactured; necessary food, provided or growing, for animals for one year; one wagon or cart, one sleigh, plow, drag and other farming utensils to value of two hundred dollars; provisions, provided or growing, and fuel, for family for one year; tools and implements and stock in trade, of any mechanic, miner, etc., to value of two hundred dollars; library and implements of any professional man to value of two hundred dollars; sewing machine; all inventions are exempt in favor of the inventor. The earnings of all persons having a family dependent on them, for three months next preceding attempt to seize them, are exempt to the amount only of sixty dollars per month; money arising from insurance on life of any person for benefit of a married woman is exempt from debts of the insured. There are also some other exemptions of particular classes.

Certain of the articles enumerated are not exempt if the debtor is a non-resident. No property is exempt as against a debt made for its purchase money.

Also a *Homestead* of forty acres, used for agriculture and a residence, or one fourth of an acre with dwelling house thereon, in any town, city or village. The proceeds of a homestead are also exempt. But the homestead is not exempt from a claim for purchase money, laborer's or mechanic's liens, taxes or mortgages.

Interest.

The legal rate of interest is seven per cent., but parties may stipulate in writing for ten per cent. Higher rates are usurious and penalty is forfeiture of all interest. Parties who have actually paid a usurious interest may recover back treble the amount above the legal rate so paid, if they bring action within a year.

Insolvency.

An insolvent debtor may make an assignment of all his property for the benefit of all his creditors according to the provisions of the laws governing the subject, and if he is not guilty of any fraud in such conveyance, may receive a discharge from his debts; but this discharge may be set aside at any time within a year, if fraud be proved against him.

Statute of Limitations.

Judgments of any court of record of this state, or of the United States sitting within this state, are good for twenty years; also sealed contracts, when the cause of action accrues in this state, excepting bonds, coupons or interest bonds made under seal by any municipality within the state. Judgments given elsewhere are only good for ten years, as are also sealed contracts which accrue outside the state. All other contracts, obligations and liabilities are good for six years. An action for slander, libel, assault, battery, false imprisonment, or an action brought by the personal representatives of a deceased person to recover damages for negligently or wrongfully causing the death of such person, must be brought within two years.

One year is given after the termination of any legal disability; and the statute does not run during the absence from the state of the defendant, if the plaintiff be a resident of the state.

A new promise or acknowledgment must be in writing to revive an outlawed claim; or a part payment is sufficient.

Wills.

Every person of sound mind and twenty-one years of age, and every married woman of the age of eighteen years, may make a valid will of real and personal estate.

Written wills must be attested by two subscribing witnesses. Nuncupative wills are good to bequeath personalty, but if the estate exceeds one hundred and fifty dollars in value, such a will must be proven by at least three witnesses who were present at its making, and who must make oath that the testator bade those present, or some of them, to bear witness that such was his will, or to that effect; and that the will was made in the last sickness of the deceased, and in the house of his habitation or dwelling, or where he had been resident for at least ten days, next previous, unless he was unexpectedly taken sick and died away from home. Unless such a will is reduced to writing within six days after being spoken, it cannot be probated after six months have passed. Soldiers and sailors in active service may dispose of personalty and wages without being bound by these limitations.

If a child is born after the making of his parent's will, and no provision is made therein for him, he receives the same portion that would have come to him had the deceased died intestate, unless the will shows an intention of disinheriting him.

A will may be inclosed in a sealed wrapper properly indorsed with names, dates, etc., and deposited with the judge of the county court, who shall safely keep it till the death of the testator, unless sooner demanded by him, or by some person authorized by him in writing, duly proved by the oath of a subscribing witness, to receive it.

The marriage of an executrix or administratrix extinguishes her authority; but she may be reappointed.

Descent and Distribution of Property.

Real property of an intestate descends as follows, subject to homestead, and dower and curtesy rights: To children equally, descendants of any deceased child taking his share; if none, to surviving widow or widower; if no such survivor, to intestate's parents or surviving parent; if neither, to brothers and sisters of intestate, children of any deceased taking his share; if none, to next of kin. If no kindred, it escheats to the school fund of the state.

The homestead descends free of all judgments and claims to the widow, or to his children and their descendants; or if there are children or descendants and a widow, to her during widowhood, and to them on her marriage or death.

Personalty is distributed after payment of debts and charges, in the same way as realty, with the exception that the widow takes her own and husband's wearing apparel and ornaments, his household furniture to two hundred and fifty dollars in value, and other personalty, selected by her, to two hundred dollars in value; that the widow and children have reasonable support during administration upon the estate; and that in the distribution of the residue of the personalty, when there is a widow and descendants, she takes a child's share.

Curtsey and Dower.

A widow is entitled to dower in all lands where her husband held an estate of inheritance at any time during the marriage, unless she is lawfully barred thereof, with some minor exceptions.

A widower takes for his life as tenant by the curtesy, all lands of which his wife died in possession, and which were not disposed of by her last will and testament; provided that if she leave issue by any former husband, to whom the estate might descend, the widower takes no curtesy therein.

Divorce.

Causes for divorce from bonds of matrimony are as follows: Adultery; impotency; sentence to three or more years' imprisonment; wilful desertion for one year next preceding the action; cruel and inhuman treatment; and for wife's being given to intoxication; habitual drunkenness for one year before the action; entire separation voluntarily for five years.

Causes for divorce from bed and board for a limited time or forever, an habitual drunkenness or wilful desertion for a year; cruel and inhuman treatment, or wife's being given to intoxication; failure of husband, being of sufficient ability, to support his wife; or such conduct by him as to make it unsafe or improper to live with him.

The plaintiff must have been a resident of the state for one year next preceding the commencement of the suit, unless the cause alleged is adultery committed while the plaintiff was a resident of the state; or unless the marriage was solemnized in the state, and the plaintiff has resided therein from the marriage till the commencement of action; or unless the wife is plaintiff, and the defendant has resided in the state one year next preceding.

The court has discretion concerning alimony and custody of children.

Married Women.

All property, real and personal, owned by a woman at marriage, and

all acquired afterward from any other source than her husband, together with the rents, issue and profits thereof, and her personal earnings, constitute her separate estate, and may be disposed of in all respects the same as if she were single. Her husband need not join in the conveyance of her realty, which she may dispose of alone, by deed or by will, thus cutting off his estate by the curtesy.

She may make all contracts concerning her separate estate, which is liable for all debts made for its benefit, or made for her own benefit as a special charge upon it. She may take property directly from her husband, and all contracts and other negotiations between them concerning her estate and its proper management will be upheld by the courts, as though they were not married. She probably cannot bind herself by a promissory note, or by an indorsement for another.

She, and not he, is liable for her ante-nuptial debts. The husband cannot charge her estate with the expenses of the family. If her husband desert or neglect her, she may become a sole trader. She may make and hold deposits in savings banks.

Miscellaneous.

Age of Majority:—The age of majority for both sexes is twenty-one years; but a married woman of eighteen years may make a valid will.

Marriage:—Men of eighteen and women of fifteen years are competent to marry; but if below the age of twenty-one and eighteen respectively, they must have the consent of parents and guardians.

Women:—Women are eligible to school offices, and may be attorneys-at-law and notaries public.

Guardians:—A married woman may be the guardian of her children by a former marriage. A mother is entitled to the custody of her children if the father is dead.

Mechanics' Liens:—Every person who performs labor or furnishes materials or machinery in the erection or repair of any building, or on any bridge, wharf, etc., may have a lien thereon for his debt. It must be filed with the clerk of the circuit court within six months, and suit brought within six months more; or by making a certain affidavit, the lien may be prolonged to a year.

Age of Consent:—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, is imprisonment for life; for rape, imprisonment from ten to thirty years, unless the victim be a common prostitute, when the term is from one to seven years; for assault with intent to commit the crime, one to ten years. Seduction of any unmarried woman of previous chaste character by a married man, or by an unmarried man with promise of marriage, is punishable by imprisonment; but the unsupported testimony of the woman is insufficient for conviction, and the marriage of the parties terminates suit.

Intoxicating Liquors:—Town or village boards, and common councils of cities, may grant licenses to such persons as they deem proper, to keep groceries, saloons or other places for retailing intoxicating liquors. When to be drank on the premises, the fee shall not be less than seventy-five dollars; not to be drank on the premises, it shall not be less than twenty-five dollars. Selling without a license is a misdemeanor, punishable by fine or imprisonment. Certain town or city officials, if credibly informed that illegal sales are made, are required to make com-

plaint before a justice of the peace, and for every failure so to do, may be fined twenty-five dollars. If any person is wasting his estate or exposing his family to loss of comfort, or endangering his health, his wife, or the aldermen or supervisors of the village or town may give written notice forbidding all licensed persons to furnish him with liquor for one year; and such notice may be renewed from year to year; disobedience thereof is punishable by fine or imprisonment. It is forbidden to give or sell liquor to any minor, or person intoxicated or bordering on a state of intoxication or to known habitual drunkards; or to Indians; or on Sundays or election days. Any person injured in person, property or means of support by, or in consequence of the intoxication of any minor or habitual drunkard, may recover damages therefor from any person who has been notified by the officers authorized by law to forbid such sale; or any husband, wife, parent, child, relative or guardian, may personally give such notice, and recover damages for the results of any disobedience thereof.

WYOMING.

Collection of Debts.

Arrest.—There is no arrest on actions arising out of contract. No woman can be arrested in any civil action except for a wilful injury to person, property, or reputation.

Attachment.—In an action for the recovery of money, an attachment may issue against the property of the defendant, if he is a foreign corporation or non-resident; or has absconded, or concealed himself or his property, or assigned or disposed of any part of his property, with intent to defraud creditors, or is about to do so; or if he fraudulently contracted the debt or incurred the obligation. Or an attachment may issue in any case when the claim does not exceed two hundred and fifty dollars, and is not otherwise secured, and has not been paid when due or within ten days thereafter on demand.

Garnishment.—Money or property in the hands of a third person may be garnished.

Exemptions.—The wearing apparel of every person is exempt. Also to every head of a family residing therewith, family Bible, pictures, school-books and burial lot; necessary furniture, bedding and other articles of personal property, including provisions, to the value of five hundred dollars. The tools, team, implements or stock in trade of any person used for carrying on his trade or business, to the value of three hundred dollars; or the library, instruments and implements of any professional man to the same value.

Also to every householder who is the head of a family a *Homestead* to the value of fifteen hundred dollars, while actually occupied as such by the owner, or his or her family. It may consist of a house and lot or lots, in any town or city, or a farm of not more than one hundred and sixty acres. No mortgage on the homestead is good unless signed by the wife of the owner, after she shall have been fully apprised by the officers taking her acknowledgment, of her rights in the matter, and the effect of her signature.

No one but a *bona fide* resident of the territory can claim any exemption, and not then if he is about to remove or abscond from the territory.

Interest.

Twelve per cent. per annum is the legal rate of interest when none is fixed, but parties may agree in writing for any rate.

Insolvency.

An insolvent debtor may assign his property for the benefit of his creditors, and obtain a discharge from all creditors who accept a dividend.

Statute of Limitations.

An action for the recovery of land may be brought within twenty-one years. Written contracts, sealed or unsealed, are good for five years; unwritten contracts for four years. All actions on judgments, claims, or contracts of any kind contracted or incurred elsewhere, before the defendant came to the territory, are barred in two years after he takes up his residence therein. For trespass to realty, taking or injuring person-

alty, action must be brought within four years; for slander, libel, assault and battery or false imprisonment, one year.

The statute does not run in favor of absconding defendants. Part payment, or acknowledgment in writing of the claim, renews an outlawed debt.

Wills.

Any person of sound mind and twenty-one years of age, married or single, may make a valid will.

All wills must be written, signed by the testator and attested by two subscribing witnesses.

A married woman cannot be appointed administratrix, and the marriage of a woman who holds that trust terminates her authority. Claims against the estates of deceased persons must be presented to the probate court for allowance within one year from the time when notice is given to do so.

Descent and Distribution of Property.

When any person dies intestate, his property, real and personal, descends in parcenary as follows: If a husband or wife survives and children or descendants thereof, half goes to the widow or widower, and the residue to the children; if no children or descendants, three fourths go to widow or widower, and one fourth to intestate's parents or parent, unless the entire estate does not exceed ten thousand dollars in value, when it all goes to the widow or widower absolutely, subject to payment of debts and charges. If no widow or widower, all to children and their descendants; if none, to parents, brothers and sisters and descendants of any deceased; if none, to remoter kindred.

Curtsey and Dower.

Curtsey and dower are abolished.

Divorce.

Marriages are void without any decree in cases of bigamy; insanity or idiocy of either party at time of marriage; or consanguinity. Marriages may also be declared void by a judicial decree if made below the age of legal consent thereto, and if the parties separate during such non-age, and do not cohabit together afterward; so marriages are voidable if the consent of either party was obtained by force or fraud, and there was no subsequent voluntary cohabitation.

Divorce from the bonds of matrimony may be decreed for the following causes: Adultery; impotency; conviction of felony and sentence to imprisonment; wilful desertion for one year; habitual drunkenness; extreme cruelty; neglect of husband for one year, to provide the common necessities of life, he being able so to do by ordinary industry; intolerable indignities; when the husband is a vagrant; conviction of felony previous to the marriage, and unknown to the other party at marriage; pregnancy of wife at time of marriage by another than her husband and without his knowledge.

The complainant must have resided in the territory six months immediately preceding the action, unless the marriage was solemnized in the territory, and the complainant has resided there ever since. The court may decree as to costs of suit, custody of children and alimony.

Married Women.

A married woman's property rights are almost identical with those of a single woman. She may hold all her property, whenever and however

acquired, and the issues and profits thereof, free from the control or debts of her husband; may make all contracts, sue and be sued alone, keep her earnings, carry on a separate trade or business, and convey her property alone.

Miscellaneous.

Women:—Women have full political rights, and may vote at all elections and hold any office.

Age of Consent:—The "age of consent" is ten years. The punishment for criminal knowledge of a child below that age, or for rape, is imprisonment not less than one year, and which may extend to life. Seduction under promise of marriage of any unmarried woman of previous chaste character, is punishable by imprisonment not exceeding three years; the subsequent marriage of the parties is a sufficient defence.

Intoxicating Liquors:—It is forbidden to sell or give away intoxicating liquors without obtaining a license therefor from the county clerk, the fee being three hundred dollars for selling in or within five miles of any town, city or village located on any railroad; for other retailing, one hundred dollars; and for wholesaling, seventy-five dollars. It is unlawful to sell on Sunday or election day, or to sell or give liquor to Indians, or minors, or well-known habitual drunkards; or to sell unwholesome or adulterated liquors.

APPENDIX.

COMMON LAW FORMS.

Promissory Note, Negotiable.

\$100. Thirty days after date, I promise to pay C. D., or bearer [or, order],
one hundred dollars, for value received. A. B.
New York, Sept. 15, 1886.

Promissory Note, Not Negotiable.

\$100. Six months after date, I promise to pay C. D. one hundred dollars, for
value received. A. B.
New York, Sept. 15, 1886.

Bill of Exchange.

\$1,000. New York, Sept. 15, 1886.
Thirty days after sight, pay to the order of Messrs. C. D. & Co., one thousand
dollars, and charge the same to account of A. B. & Co.
To Messrs. E. F. & Co., London.

Bank Check.

No. 125. San Francisco, Sept. 15, 1886.
A. B. & Co., pay to C. D., or order, five thousand dollars (\$5,000.)
E. F.

Receipt on Account.

\$100. New York, Sept. 15, 1886.
Received of C. D., one hundred dollars, to apply on account.
A. B.

Receipt in Full.

\$99.50. New York, Sept. 15, 1886.
Received of C. D. ninety-nine dollars and fifty cents, in full of all demands
against him. A. B.

Release of all Demands.

Know all men by these presents: That I, A. B., of the city of Chicago, for
and in consideration of the sum of one thousand dollars, to me in hand paid by C.
D., of New York City, have remised, released, and forever discharged, and by
these presents do, for myself, my heirs, executors, administrators and assigns,
remise, release, and forever discharge, the said C. D., his heirs, executors and ad-
ministrators, of and from all and all manner of action and actions, cause and
causes of action, suits, debts, dues, sums of money, claims and demands, whatso-
ever, in law or in equity, which I ever had or now have, or which I or my heirs,
executors, administrators, or assigns, hereafter can, shall or may have, by reason of
any matter, cause or thing whatsoever, from the beginning of the world to the
date of these presents.

In witness whereof, I have hereunto put my hand and seal, this sixteenth day
of September, one thousand eight hundred and eighty-six.

In presence of {
E. F.

A. B. [SEAL.]

Special Release.

[Same as general release, but adding to the first paragraph, so that it reads as follows:] from the beginning of the world to the date of these presents, arising out of any dealings, or transactions between myself and the said C. D., at my store in the city of Chicago.

General Form of Contract—Damages Fixed.

This agreement, made this sixteenth day of September, one thousand eight hundred and eighty-six, by and between A. B., of the city of Chicago, in the county of Cook and state of Illinois, manufacturer, of the first part, and C. D., of said Chicago, merchant, of the second part, witnesseth: That the said party of the second part covenants and agrees to and with the party of the first part, to [here insert the subject-matter of the agreement]. And the said party of the first part covenants and agrees to pay unto the said party of the second part, for the same, the sum of five thousand dollars, lawful money of the United States, as follows: The sum of two thousand dollars on the sixteenth day of November, 1886, and the sum of three thousand dollars on the sixteenth day of January, 1887, with the interest on the amount due, payable at the time of each payment.

And for the true and faithful performance of all and every of the covenants and agreements above mentioned, the parties to these presents bind themselves, each unto the other, in the penal sum of ——— dollars, as liquidated damages, to be paid by the failing party.

In witness whereof, the parties to these presents have hereunto set their hands [and seals], the day and year first above written.

[Signatures of both parties, with or without seals, as may be agreed upon.]

Signed, sealed and delivered }
in the presence of }
[Signatures of witnesses.]

Contract with a Clerk or Workman.

This agreement, made the sixteenth day of September, 1886, between A. B., of Chicago, Cook County, State of Illinois, of the first part, and C. D. of said Chicago, of the second part, witnesseth: That the said A. B. agrees faithfully and diligently to serve the said C. D., as clerk in the store of the said C. D., [or any other agreement that may be made] at said Chicago, for the period of three years from and after the first day of October next, for the sum of one thousand dollars per year. In consideration of which service so to be performed, the said C. D. agrees to pay the said A. B. the sum of eighty-three dollars and thirty-three and one-third cents per month, payable as follows: On the first day of November next, and on the first day of each month following, during said term of three years.

And it is understood and agreed that the death of either of them occurring prior to the expiration of said term of three years, shall terminate this agreement.

In witness whereof [etc., as in form given above].

Short Form of Will.

The last will of A. B., of New York City, merchant, revoking all former wills.

1. I give, devise and bequeath all my property, both real and personal, to Z. B., my wife.

2. I appoint G. H. the executor of this will.

[Signatures of }
witnesses.] }

[Signature.]

Another Form for a Will.

I, A. B., of the city of New York, County and State of New York, merchant, declare this to be my last will and testament:

1. I give and bequeath to my wife, Z. B., ten thousand dollars, to be received by her in lieu of dower.

2. To my son, G. B., and to my daughters, V. M. and W. B., five thousand dollars each, all of which said legacies I direct to be paid within one year after my decease.

3. I also give and devise to my son G. B., aforesaid, my house [*here designate the property*], together with all the hereditaments and appurtenances thereto belonging or in any wise appertaining; to have and to hold the premises above described to the said G. B., his heirs and assigns, forever.

4. I give, devise and bequeath all the rest, residue and remainder of my real and personal property, of what nature or kind soever, to my said wife, Z. B.

5. I hereby appoint my son G. B. and my wife Z. B. joint executors of this will, revoking all former wills by me made.

In witness whereof, I, A. B., have to this my last will and testament, consisting of two sheets of paper, subscribed my name [*and set my seal*] this sixteenth day of September, A. D. 1884.

[*Signature, with or without seal.*]

Subscribed by the testator in the presence of each of us, and at the same time declared by him to us to be his last will and testament, and thereupon we, at the request of the testator, sign our names hereto as witnesses, this sixteenth day of September, 1884, at New York city.

[*Signatures and addresses of witnesses.*]

(The attestation clause, given over the signature of the witnesses in the above will, is worded according to the laws of New York concerning the execution of wills. In any other state, it should conform to the laws of such state.)

Codicil to a Will.

Whereas I, A. B., of New York City, have made my last will and testament in writing, bearing date the sixteenth day of September, 1884, in and by which I have given and bequeathed to my daughter V. M., the sum of five thousand dollars, and whereas my said daughter has since departed this life leaving no surviving children: Now, therefore, I do, by this my writing, which I hereby declare to be a codicil to my said last will and testament, and to be taken as a part thereof, order and declare that my will is that the said sum of five thousand dollars be added to the bequest of five thousand dollars already given to my daughter, W. B.

In witness whereof, etc.

Short Form for a Warranty Deed.

To all people to whom these presents shall come, greeting:

Know ye, that I, A. B., of [*state residence*] for the consideration of — dollars, received to my full satisfaction of C. D., of [*state residence*] do grant, bargain, sell and confirm, unto the said C. D., his heirs and assigns, all [*describe property*], to have and to hold the above granted and bargained premises, with the appurtenances thereof, unto the said C. D., his heirs and assigns, to his and their own

proper use and behoof forever. And I do, for myself, and my heirs, executors and administrators, covenant with the said C. D., his heirs and assigns, that at and until the unsealing of these presents, I am well seized of the premises, as of a good and indefeasible estate in fee simple, and have good right to bargain and sell the same, in manner and form aforesaid; and that the same is free from all incumbrance whatsoever. And further, I do by these presents bind myself and my heirs, to warrant and forever defend the above granted and bargained premises, unto the said C. D., his heirs and assigns, against all claims and demands whatsoever.

In witness whereof, I have hereunto set my hand and seal, the sixteenth day of September, in the year one thousand eight hundred and eighty-six.

Sealed and delivered
in presence of }
G. H.

A. B. [Seal.]

Quit Claim Deed.

Know all men by these presents: That we, A. B., of [state residence], and C., his wife, in consideration of the sum of ——— dollars, to us in hand paid by E. F., of [state residence], the receipt whereof we do hereby acknowledge, have bargained, sold and quit claimed, and by these presents do bargain, sell and quit claim, unto the said C. D., and to his heirs and assigns forever, all our and each of our right, title, interest, estate, claim and demand, both at law and in equity, and as well in possession as in expectancy, of, in and to, all that certain piece or parcel of land, situate [describe property], with all and singular the hereditaments and appurtenances thereunto belonging.

In witness whereof, we have hereunto set our hands and seals, the day and year first above written.

Sealed and delivered }
in presence of G. H.

A. B. [Seal.]
C. B. [Seal.]

Power of Sale Mortgage, given to secure Payment of Purchase Money of the Premises.

This indenture, made the sixteenth day of September, in the year of our Lord one thousand eight hundred and eighty-six, between A. B., of [state residence], of the first part, and C. D., of [state residence], of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of ——— dollars, doth grant, bargain, sell and confirm, unto the said party of the second part, and to his heirs and assigns, all [describe property], together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining. This conveyance is intended as a mortgage to secure the payment of the sum of ——— dollars, in five years from the day of the date of these presents, with annual interest, according to the condition of a certain bond, dated this day, and executed by the said A. B. to the said party of the second part; and these presents shall be void if such payment be made. But in case default shall be made in the payment of the principal, or interest, as above provided, then the party of the second part, his executors, administrators and assigns, are hereby empowered to sell the premises above described, with all and every of the appurtenances, or any part thereof, in the manner prescribed by law; and out of the money arising from such sale, to retain the said principal and interest, together with the costs and charges of making such sale; and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the party of the first part, his heirs or assigns.

In witness whereof [etc., as in deed].

Mortgage to Secure Promissory Note.

This indenture, made [etc., as in form given above, to and including description of property, and then add:] This conveyance is intended as a mortgage to secure the

payment of a certain promissory note, now held by the party of the second part, given by the party of the first part, for the sum of — dollars, dated the — day of — last past, and payable to W.Y., or bearer, three months from the date thereof, with use; and if the amount of the said note, principal and interest, shall be paid at maturity, then these presents shall become void, and the estate hereby granted shall cease and utterly determine; but if default shall be made in the payment of the said sum of money, or the interest, or of any part thereof, at the time hereinbefore specified for the payment thereof, the said party of the first part, in such case, doth hereby authorize, and fully empower the said party of the second part, his heirs, executors, administrators and assigns, to sell the said hereby granted premises at public auction, and convey the same to the purchaser in fee simple, agreeably to the act in such case made and provided, and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said note, together with all costs and charges, and pay the overplus, if any to the said party of the first part, his heirs, executors, administrators or assigns.

In witness whereof [*etc., as in deed*].

Short Form of Lease.

This indenture, made the sixteenth day of September, A. D., 1886, between A. B., of —, in the county of —, and state of —, merchant of the first part, and C. D., of — in the said county, farmer, of the second part, witnesseth: That the party of the first part has hereby let and rented to the party of the second part, and the party of the second part has hereby hired and taken from the party of the first part [*describe premises*] with the appurtenances, for the term of — years to commence the first day of October next, at the yearly rent of — dollars, payable in equal quarterly payments on the usual quarterly days in each year. And it is agreed that if any rent shall be due and unpaid, or if any default shall be made in any of the covenants herein contained, then it shall be lawful for the party of the first part to re-enter the said premises, and to remove all persons therefrom, the party of the first part hereby waiving any notice to quit.

And the said party of the second part covenants to pay to the said party of the first part the said rent as herein specified, and that at the expiration of the said term, or other determination of this lease, the said party of the second part will quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted; and the said party of the first part covenants that the said party of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

In witness whereof, the parties hereto have hereunto interchangeably set their hands and seals, this sixteenth day of September, A. D., 1886.

Signed, sealed and delivered in the presence of }

[*Signatures and Seals.*]

[*Signatures of Witnesses.*]

Notice to Quit by Landlord.

Please to take notice, that you are hereby required to surrender, and deliver up possession of the house and lot known as lot number —, in — street, in the town of —, which you now hold of me; and to remove therefrom on the — day of — next, pursuant to the provisions of the statute relating to the rights and duties of landlord and tenant.

Dated this — day of —, 1886.

Yours, etc.,

A. B., Landlord.

To C. D.

Notice to Quit by Tenant.

Please to take notice, that on the — day of — next, I shall quit possession and remove from the premises I now occupy, known as house and lot number —, in — street, in the city of —.

Dated this — day of —, 1886.

Yours, etc.,

C. D.

To A. B., Landlord.

Bond to Secure Credit.

Know all men by these presents, that J. B. as principal, and H. K. as surety, are firmly held and bound unto the Sanitary Pub. Co., of Chicago, Ill., in the penal sum of one hundred dollars [\$100.00] of lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and by these presents.

The conditions of the above obligations are such that if the said principal shall well and truly pay for all goods bought of said Sanitary Pub. Co., within an average of thirty days from the dates of shipment thereof, by said Sanitary Publishing Co., this obligation shall be void, otherwise, in full force.

Witness our hands and seals this — day of September, 1886.

J. B. [Seal]

H. K. [Seal]

I own real estate worth at the fair valuation, one thousand dollars [\$1000.00] over and above all debts, liabilities and exceptions.

H. K. [Seal]

Bordentown, Tenn.

Sept. —, 1886.

GLOSSARY.

A

Abduction.—The taking and carrying away of a child, a ward, a wife, etc., either by fraud, persuasion or open violence.

Abortion.—Miscarriage.

Accessory.—One who is guilty of a felonious offense, not principally, or as chief actor, but by participation, as by command, advice, concealment, etc.

Accomplice.—An associate in a crime.

Acknowledgment.—The act of one who has executed a deed of real property, in going before some competent officer or court, and declaring on oath that it is his act or deed.

Acquest.—An estate acquired by purchase.

Action.—The formal demand of one's right from another person or party, made and insisted on in a court of justice.

Administrator.—A man authorized to manage the estate of one who has died without a will and distribute it among his heirs. An *Administrator with the Will Annexed* is one who is appointed to carry out the provisions of a will, there being no competent executor named in the will, or surviving. An *Administratrix* is a woman who is thus authorized.

Advancement.—A gift by anticipation from a parent to a child of a part or the whole of what it is supposed such child would inherit on the death of the parent.

Affidavit.—A statement or declaration reduced to writing, and sworn to before some officer who has authority to administer oaths.

Affinity.—The connection existing, in consequence of marriage, between each of the married persons and the kindred of the other.

Agent.—One who undertakes to transact some business, or to manage some affair for another, by the authority and on the account of the latter, and to render an account of it.

Alien.—By American law, one born out of the jurisdiction of the United States, and not naturalized.

Alienate.—To convey or transfer any title, property or right to another.

Alimony.—The allowance which a husband, by order of court, pays to his wife living separate from him, for her maintenance.

Ante-Nuptial.—Before marriage.

Ascendants.—Those from whom a person is descended.

Assault.—An unlawful attempt, with force or violence, to do bodily injury to another.

Assets.—The property of any deceased or insolvent person, subject by law to the payment of his debts.

Assign.—To transfer or make over to another.

Assignee (sometimes also called *Assign*).—One to whom an assignment has been made.

Assignor.—One who makes an assignment.

Attachment.—Taking into the custody of the law the person or property of one already before the court, or of one whom it is sought to bring before it. Also a writ for the accomplishment of this purpose.

Avoid.—To make void, to annul, or vacate.

B

Bar.—A perpetual destruction of the action, or right of action, of plaintiff; as by the statute of limitations.

Battery.—Any unlawful beating, or angry and violent touching, of another or his clothes, or the chair in which he is sitting, etc., without his consent.

Bequeath.—To give personal property to another by will.

Bequest.—A gift by will of personal property.

Bill of Exchange.—(See definition in text, page 97.)

Bona Fide.—In good faith.

C

Caveat Emptor.—Let the purchaser take care.

Charter.—The act of legislature creating a corporation.

Chattel.—Every kind of property, movable or immovable, which is less than a fee-simple estate. Chattels, whether real or personal, are treated as personal property.

Chose in Action.—A thing of which one has not present, actual possession, but only a right to it, or a right to demand it by action of law.

Civil Remedy.—That given by process in the civil courts to a party injured, in distinction to a criminal prosecution.

Codicil.—Some addition to, or qualification of, a last will and testament.

Collateral Security.—Property or any other contract transferred to secure the performance of a principal engagement.

Collusion.—An agreement between two or more persons to defraud another of his rights, or to obtain an object forbidden by law.

Commonwealth.—A free state or republic having a republican form of government. The legal title of the states of Kentucky, Massachusetts, Pennsylvania and Virginia.

Community Property.—In French law, a species of partnership which a man and woman contract when lawfully married to each other. Several of our Western and Southern states and territories have adopted this system.

Complainant.—A plaintiff in an equity suit.

Compound.—To discharge from obligation upon different terms than those originally agreed upon; as to *compound a debt* for less than the sum due. To *compound a felony*, as by agreeing with a thief not to prosecute him if he will return the stolen property, or will pay a sum of money, is an indictable offense.

Condonation.—The conditional forgiveness, by a husband or wife, of a matrimonial offense which the other has committed.

Connivance.—An agreement or consent, indirectly given, that something unlawful shall be done by another.

Consanguinity.—The relation of persons by blood.

Consideration.—The cause which moves a contracting party to enter into an agreement.

Construe.—To explain the sense or intention of; to interpret.

Contract.—To make an agreement. (See definition in text, page 23.)

Contractor.—One who specifically engages to do a certain work for a certain price, either by his own labor or that of others.

- Contractual*.—Of the nature of a contract.
- Conversion*.—A wrongful appropriation of personal property to the exclusion of the owner's rights, or to the alteration of the property itself.
- Conveyance*.—The transfer of title to real property from one to another.
- Coparcenary or Parcenary*.—Partnership in inheritance; joint heirship.
- Copartner*.—A partner.
- Costs of Suit*.—Court costs or fees, allowed by statute in a lawsuit.
- Copyright*.—The exclusive privilege of printing, publishing and selling certain writings or drawings.
- Criminal Conversation*.—(often abbreviated *Crim. Con.*) Adultery.
- Criminal Process*.—An action at law by the public to punish one who commits a crime, in distinction to a civil action by an individual for damages.
- Curtsey*.—The life interest in his wife's real property which a widower has at common law, providing a child has been born alive during the marriage and during the life of the mother.

D

- Damages*.—The indemnity recoverable by a person who has sustained an injury to his person, property or reputation, by the fault of another.
- Deed*.—A writing containing a contract, sealed and delivered by the party thereto.
- Defeasible*.—Capable of being defeated, annulled or made void.
- Defendant*.—One who is summoned into court, and denies or opposes the demand or charge, and maintains his own right.
- Descendant*.—One who descends, as offspring, from an ancestor, however remote.
- Descent*.—Hereditary succession.
- Devise*.—A gift of real property by a person's last will.
- Devisee*.—A person to whom a devise has been made.
- Devisor*.—One who devises real estate.
- Disability*.—The lack of legal capacity.
- Disinheritson*.—The act of depriving a forced heir of the estate which the law gives him. (In states whose law is founded on the civil or French law.)
- Disinheritance*.—The act of depriving an heir of his natural inheritance.
- Dissolution*.—The act of dissolving or annulling.
- Distribution*.—The division of the personal estate of an intestate among those entitled thereto.
- Document*.—Written papers of all kinds used to prove a fact.
- Domicil*.—A residence at a particular place with intention of remaining there indefinitely.
- Dowable*.—Entitled to dower.
- Dower*.—The one third interest in the real property owned by her husband during marriage, which the common law gives to a widow.
- Duress*.—Personal restraint, or fear of personal injury or imprisonment.

E

- Emancipation*.—The act of setting free from dependence.
- Embezzle*.—To appropriate fraudulently to one's own use.
- Emblements*.—The right of a tenant to take and carry away, after his tenancy has ended, such annual products of the land as have resulted from his own care and labor.
- Encumber*.—To load with debts, mortgages or other claims.
- Entail*.—To restrict the inheritance of real property to a particular class of descendants.

Equitable Estate.—A special right or interest in property, less than the general legal right, created by courts of equity, and usually dependent on them for support.

Equity.—(As distinguished from law.) A branch of jurisprudence by which it is sought to do entire justice to all parties concerned, in the classes of cases which come within its province.

Equity of Redemption.—Mortgagor's right to redeem an estate, by payment in full.

Escheat.—To revert, return, or become forfeited.

Estate.—The interest which one has in real property.

Executor.—The man appointed by a testator to execute his will after his decease.

If a woman is appointed she is an *Executrix*.

Exempt.—To free from an obligation which is binding upon persons or things of the same class.

Express.—(As distinguished from *Implied*.) Distinctly set forth or stated.

F

Fee or Fee Simple.—An estate in real property belonging to a person absolutely, without conditions.

Fee Tail.—An estate in real property limited to a particular class of heirs.

Felony.—A grave offense; generally an offense punishable by death or imprisonment.

Feme Covert.—A married woman.

Feme Sole.—An unmarried woman.

File.—A paper is said to be filed when delivered to the proper officer, and by him received to be kept on file.

Fixtures.—Articles of personal property affixed to real property.

Fraud.—Deception deliberately practiced with a view to gaining an unlawful or unfair advantage.

Free Trader.—One who is at liberty to carry on business or trade at will, and be bound thereby; thus in many states a married woman may be made a free trader by the court.

G

Garnishee.—A person who has money or property in his possession belonging to a defendant, which has been attached in his hands.

Garnishment.—The notice given to a garnishee to appear in court and answer concerning the ownership of property in his possession.

Guarantor.—He who makes a guaranty.

Guaranty.—An undertaking to answer for another's liability.

H

Hereditament.—Property that may be inherited.

Holographic or Olographic.—A will written and signed entirely by the hand of the testator. It need not be witnessed.

Homestead.—The place of the house, or home place.

Householder.—One who keeps house with his family.

I

Illegitimate.—Contrary to law; born out of lawful wedlock.

Implication.—An inference of something not directly declared, but arising from what is admitted or expressed either by words or acts.

Imply.—To infer from acts or otherwise that which is not directly expressed in words.

Impotence.—The incapacity for copulation or propagating the species.

Inchoate.—That which is not yet completed or finished.

Incorporate.—United in one legal body or body politic.

Indict.—To charge with a crime in due form of law, by the finding of a grand jury.

Indorse.—To write one's name on the back of any paper, thus becoming responsible therefor to the indorsee or indorsees.

Indorsee.—The person to whom a note, bill or other paper is assigned by indorsement.

Indorser.—The person who indorses.

Insolvent.—One whose estate is insufficient to pay his debts.

Instrument.—A writing which contains some agreement.

Intestate.—One who dies without having made a valid will.

Inventory.—A list of property belonging to a person.

Issue.—Descendants.

J

Judgment.—The decision or sentence of the law given by a court of justice or other competent tribunal as the result of proceedings instituted therein for the redress of an injury.

Judicial.—Proceeding from a court of justice.

Jurisdiction.—The limit within which legal power may be exercised.

Jurisprudence.—The science of law.

K

Kin or Kindred.—Relations by blood.

L

Larceny.—The wrongful taking and carrying away of personal property, with the felonious intention of converting it to his own use.

Law.—The doctrines and procedure of the common law of England and America, as distinguished from those of equity.

Lease.—A contract for the possession and profits of real property usually for a specified time. Sometimes improperly applied to personal property.

Legacy.—A gift, by will, of personal property; a bequest.

Legatee.—One to whom a legacy is bequeathed.

Letter of Attorney.—See Power of Attorney.

Letters of Administration.—The instrument by which an administrator or administratrix is authorized to administer the estate of a deceased person.

Letters Testamentary.—The instrument by which, after probate of a will, an executor is authorized to carry out its provisions.

Levy.—A legal seizure of property for the satisfaction of a debt or other lawful demand against the owner.

Liability.—The state of being bound or obliged in law or justice.

Libel.—The plaintiff's petition or allegation, made and exhibited in a judicial process, with some solemnity of law. Also, in torts, anything which is written or printed, and published calculated to injure the reputation of another by bringing him into ridicule, hatred or contempt.

Libellant.—The party who files a libel; corresponding to the plaintiff in a common law court.

Libellee.—The party against whom a libel has been filed.

Lien.—A hold or claim which one person has on the property of another, as a security for some debt or charge.

Limitations.—A certain period limited by statute, after which a claimant shall not enforce his claim by suit.

Lineal.—Allied by direct descent.

Liquidate.—To fix the value of something which was before uncertain; thus in a liquidated debt or liquidated damages, the amount has been settled upon.

Local Option.—The power of deciding any question by vote in any given locality; usually applied to the question of prohibiting the sale of intoxicating liquors.

M

Mechanics' Liens.—The lien which a mechanic or material man has by statute on buildings which he has erected or repaired.

Mense Profits.—Profits of premises during the time the owner has been wrongfully kept out of possession of his estate.

Misdemeanor.—A criminal offense less than a felony.

Mortgage.—The conveyance of property, real or personal, by way of security for the payment of debt, and to become void upon such payment.

N

Negotiable.—Capable of being transferred by indorsement.

Nisi.—Unless.

Nonage.—Minority.

Non-resident.—One who is not a resident of a particular place.

Nullity.—Void; invalid; incapable of being validated.

Nuncupative.—Oral; not written.

O

Olograph.—See Holograph.

Oral.—Spoken; not written.

P

Parcenary.—See Coparcenary.

Partner.—An associate in any business or occupation.

Payee.—The person to whom money is to be paid.

Pending.—Undecided; in suspense.

Per Capita.—By the head. When descendants inherit as individuals, and not by right of representation of their ascendants, they are said to take *per capita*.

Perpetuity.—Something perpetual; of endless duration. The law against perpetuities forbids the reserving of property out of commerce for a longer time than a life or lives in being, and twenty-one years and nine months thereafter.

Per Se.—Considered by itself.

Personalty.—That which is movable.

Petition.—An instrument of writing or printing, containing a prayer from the person presenting it, called the *Petitioner*, to the person or body to whom it is addressed, for the redress of some wrong or the grant of some favor.

Plaintiff.—He who in a personal action, seeks a remedy for an injury to his rights.

Post-Nuptial.—After marriage.

Power of Attorney.—An instrument authorizing a person to act as the agent or attorney of the person granting it.

Precedent.—(Adj.) Going before; preceding. (Noun) Something done or said which may serve as an example to authorize subsequent acts of the same nature.

Presumption.—Supposition of the truth or real existence of something without direct or positive proof thereof.

Principal.—A chief actor in any matter; one who is primarily responsible.

Prior.—Preceding in the order of time.

Probate.—To prove before an officer authorized by law, that an instrument is the last will and testament of the deceased whose act it purports to be.

Process.—The means of compelling a defendant to appear in court.

Promissory Note.—A written promise to pay a certain sum of money at a future time, unconditionally. (See definition in text, page 96.)

Pro Rata.—In proportion.

Protest.—An act by a notary public, on non-payment of a bill of exchange (or sometimes a promissory note), declaring that all the parties to it will be held responsible.

Q

Quarantine.—The space of forty days during which a widow may remain in the principal mansion house of her husband, immediately after his death.

Quasi.—As if; almost.

R

Realty.—Real property; immovables.

Rebut.—To contradict.

Remainder.—The remnant of an estate in land, which will come into possession of the remainder-man upon the termination of a certain prior estate, which may be for life, or for years, etc.

Remainder-Man.—One to whom an estate in remainder is to come.

Residue.—That which remains of something after taking away a part of it.

S

Seal.—An impression upon wax, wafer, or some other tenacious substance capable of being impressed. Sometimes a stamp in the substance of paper.

Separate Estate.—Of a married woman, is that which belongs to her alone, and over which her husband has no right.

Solvent.—Ability to pay all debts.

Specialty.—A sealed writing, containing some agreement.

Status.—The condition of a person, whether concerning himself or his property.

Stoppage in Transitu.—The recovery by the seller of possession of goods which have not been paid for, while on their way to the buyer, but before he has acquired actual possession of them.

Subsequent.—Following in time; succeeding.

Suit.—An action.

Summary.—Quickly executed.

Summons.—A citation or warning to appear in court.

Surety.—One who is bound with and for another.

T

Tenements.—Anything of a permanent nature which may be held or owned. Also rooms let or leased in a house.

Testament.—A last will.

Testamentary.—Pertaining to a will. (See *Letters Testamentary*.)

Testator.—A man who leaves a will or testament at death. A woman who leaves a will is called a *testatrix*.

Transitu.—(See *Stoppage in Transitu*.)

Trespass.—An unlawful act, committed with violence, actual or implied, to the person, property or rights of another. A *Trespass to Realty* is any unauthorized entry upon the realty of another.

Trover.—A form of action which lies to recover damages from one who has wrongfully converted to his own use personal property of the plaintiff.

Trustee.—One to whom property has been conveyed to be held or managed for another.

Trustee Process.—A means by which a creditor may attach property and credits of a debtor in the hands of third persons. Thus called in New England; out of New England, it is known as the *Garnishee Process*.

U

Unliquidated.—Unascertained. (See Liquidated.)

Usury.—The excess over the legal rate charged to a borrower for the use of money.

V

Vend.—To sell.

Vende.—One to whom anything is vended or sold.

Vendor.—One who vends or sells.

Verbatim.—Word for word.

Vest.—To give an immediate fixed right of present or future enjoyment or possession.

Void.—Of no legal force; null and incapable of confirmation or ratification.

Voidable.—Capable of being avoided, or of being confirmed; not absolutely void.

W

Warranty.—An agreement, express or implied, that a certain fact regarding the subject of a contract is, or shall be, as it is expressly or impliedly declared or promised to be.

Waste.—Spoil or destruction done or permitted to real property, by the tenant thereof, to the injury of the heir or other party who has the ultimate right of possession.

Writ.—An instrument under seal, issued from the proper authority, commanding the performance or non-performance of some act by the person to whom it is directed.

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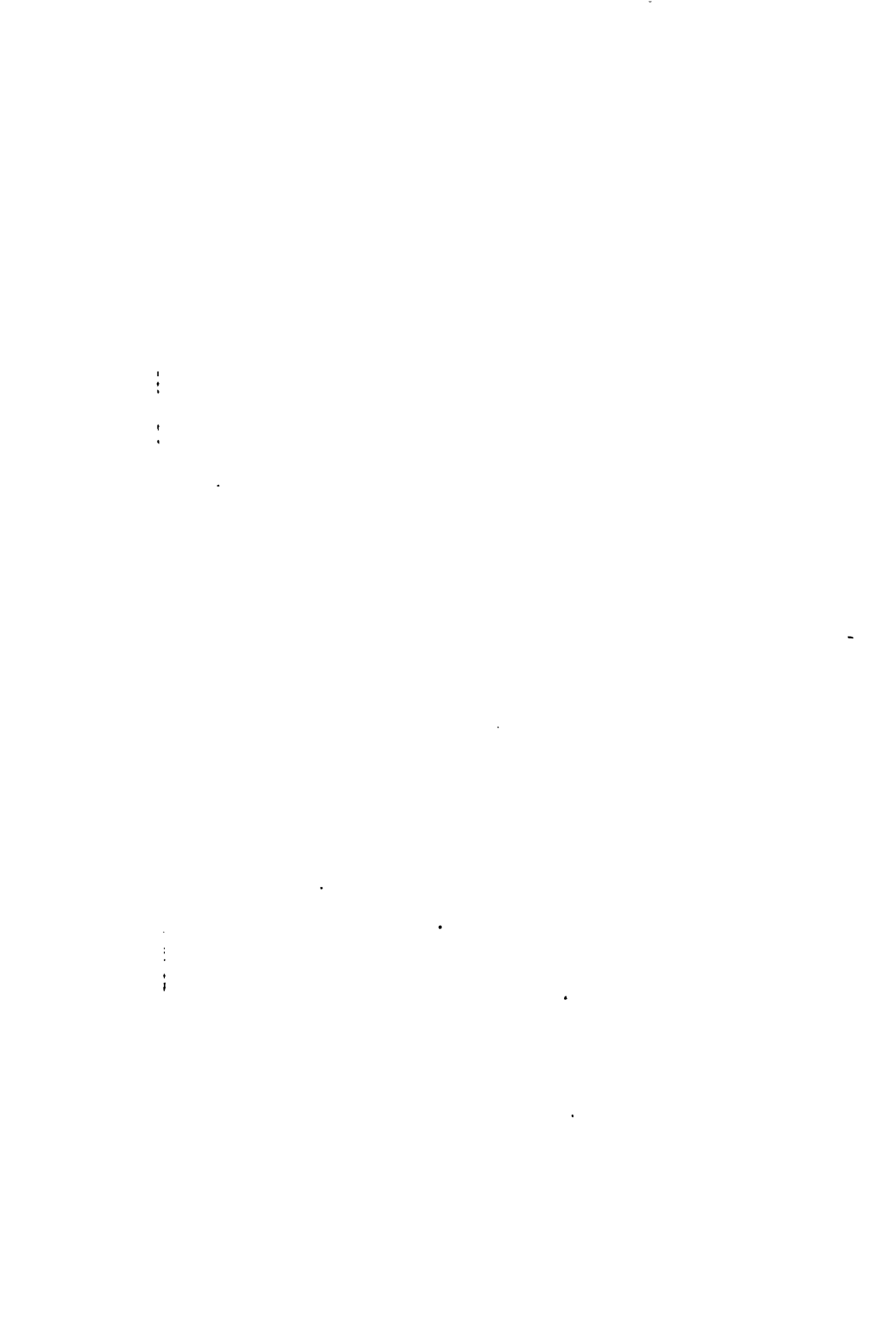
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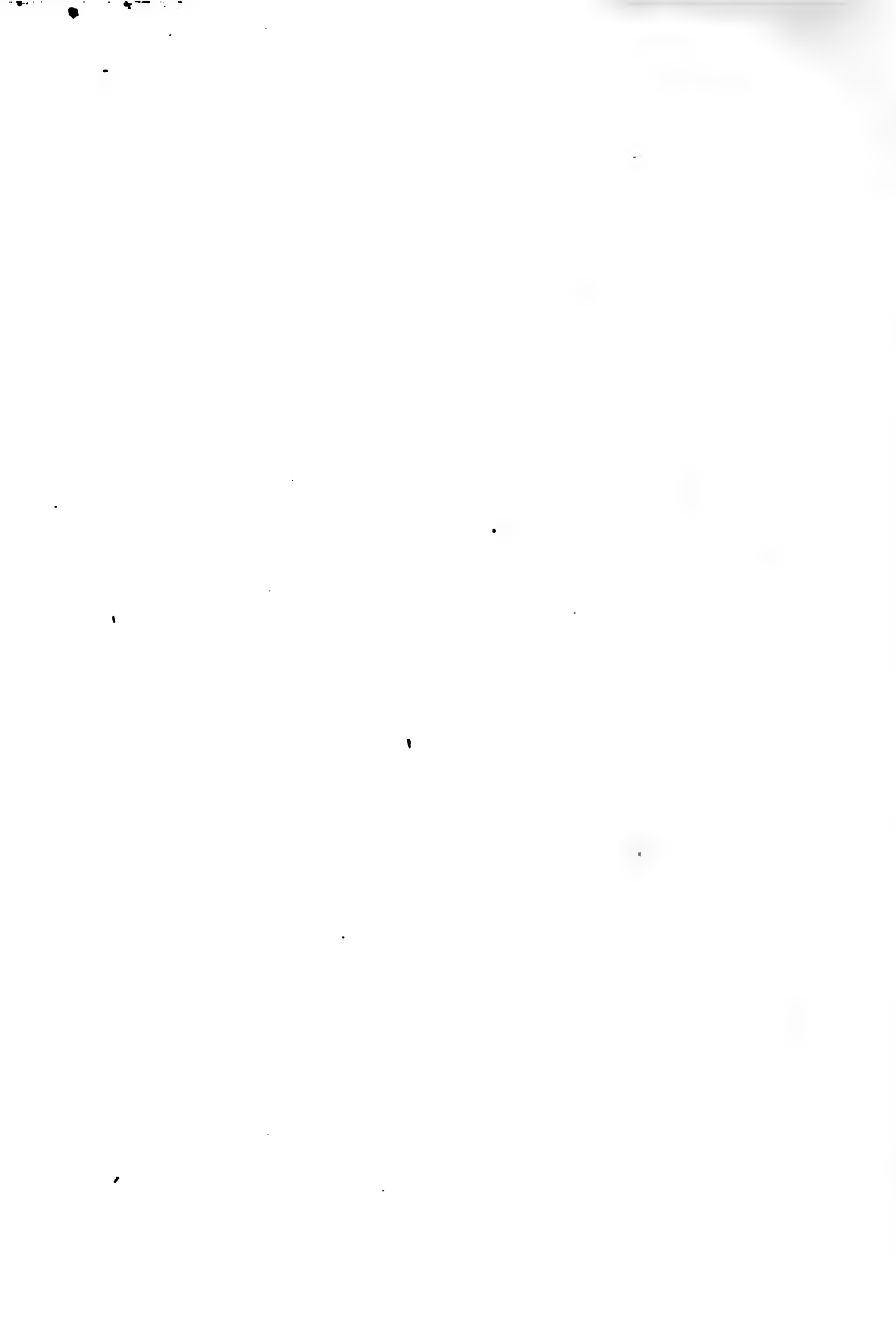
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